S. HRG. 99-328

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENTS

HEARING

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 747

TO IMPROVE THE ADMINISTRATION AND ENFORCEMENT OF THE MAGNUSON FISHERY AND CONSERVATION MANAGEMENT ACT

S. 1245

ENTITLED THE "FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENTS OF 1985"

S. 1386

TO PROMOTE THE AMERICANIZATION OF DOMESTIC MARINE FISHERY RESOURCES, AND FOR OTHER PURPOSES

JULY 23, 1985

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FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENTS

TUESDAY, JULY 23, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
NATIONAL OCEAN POLICY STUDY,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room 253, Russell Senate Office Building, Hon. Slade Gorton and Hon. Ted Stevens presiding jointly.

Staff members assigned to this hearing: Joe Plesha, Bob Eisenbud, staff counsels; and Jim Drewry, minority staff counsel.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Senator Stevens and I want to welcome all of you to this hearing this morning. Many people in this room have spent a tremendous amount of time and energy in an effort to better the American fishing industry. Today we are going to have the opportunity to listen to many of you testify on possible amendments to the Fishery Conservation and Management Act, which is the cornerstone of this Nation's fisheries policy.

The Magnuson Act was always focused on the promotion and full development of the U.S. fisheries resources. The principal strategy of the act is to accomplish this goal by a so-called fish and chips policy, pursuant to which nations are required to assist in the development of the American industry in exchange for allocations of fish from our 200 mile waters.

This policy has worked well for some segments of the industry. Joint venture operations have given rise to the rapid Americanization of ground fish harvesting. From their infancy in 1979, joint ventures have become one of the industry's immense success stories. Last year alone, American boats caught over half a million metric tons of ground fish worth $51 million in joint ventures with foreign processors.

The expansion of the domestic harvesting industry has not been accomplished without some frustration. The United States has not yet been able to take full advantage of the vast quantities of fish in our waters. To achieve the full benefit of our fisheries resources, it is imperative that we examine our current fisheries policy and develop plans to increase domestic utilization.

We are a nation with approximately 20 percent of the world's fisheries resources within our 200-mile waters. Yet in 1984 we had a trade deficit of fish and fish products of $5 billion. Many of these

imports were produced from fish harvested within our own waters. Foreign markets which utilize much of our ground fish resource remain substantially closed to American processed products. The jobs which should go to U.S. fishermen and seafood processors are now being filled by foreign labor.

It is increasingly clear that America's fish and chips policy is inadequate standing alone. Many ideas on how to solve the problem have been suggested, including a date certain phaseout of all foreign presence in our waters. I have introduced S. 1386 with a slightly different approach, based on a unique recommendation proposed by a broad-based group of Pacific Northwest fishing industry representatives—joint venture harvesters, factory trawlers, various group representative and processors—that developed this compromise.

These groups, with often divergent interests, deserve a tremendous amount of credit for working toward a compromise approach to full domestic utilization of fisheries resources. S. 1386 would phase in domestic utilization of our ground fish resource in the North Pacific Ocean by annually reducing the foreign fishery.

The unique feature of this proposal is that two separate reserves are created with surplus fish. One reserve would be for utilization by joint venture fishermen, the other exclusively for domestic processors. Under this plan, both sectors of the industry will benefit.

Views on how best to achieve full Americanization of our fisheries differ, but the goal is shared by all. Development of our fishing industry should not come at the expense of either harvesters or processors. S. 1386 is intended to bring these diverse interests together to clarify the Nation's fisheries policies, to stimulate growth, and to create new American jobs.

Senator Stevens and I, in light of the immense importance of these issues to both Washington and Alaska, are chairing this hearing jointly, and Senator Stevens also has an opening statement and bill on this subject.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Thank you very much, Senator Gorton. I am delighted to be able to work with you on this and to repeat once again the working relationship between our two States on this matter that is so vital to us and to the Nation as a whole.

There have been great strides made since the passage of the basic Magnuson Act in 1976. I every once in a while have someone ask me, what does the 200 mile limit really mean to us? I think this hearing will demonstrate the importance of the Magnuson Act. As you mentioned, there are matters that now need to be reviewed to determine what changes should be made in the basic act in view of this unprecedented growth in the industry and the development of some rather difficult problems for many segments of the industry.

Alaska will have two large shore-based surimi processing plants built with the aid of Japanese investment, primarily as a result of some negotiations that took place between the United States and the Japanese on an industry-to-industry basis. The Korean fishing

industry is entering into new negotiations with both processors and harvesters next week in Anchorage.

We have in the audience a great many people that I remember seeing in this—well, not in this room, but in the committee room at the time we dealt with the basic hearings on the 200-mile limit bill as the Commerce Committee considered it back in the seventies. Whatever changes we make in this act, they have to be arrived at on the basis of consensus, and not only on the west coast, but we are reminded by our good friend from New Jersey sitting here waiting to testify that it is a very important matter on the east coast also.

I look forward to trying to work out that consensus to maintain a strong coalition that is willing to support the additional development of our fisheries. And particularly, I want to go into the question of this continued high seas interception of salmon by Taiwan and by other nations, that I think will ultimately destroy the great salmon runs we have on the west coast unless we can find some way to convince those nations to cease those activities.

So I join you and look forward to these hearings and look forward to comments that I am sure we are going to hear from all segments of the industry and the Government.

[The statement and bills follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, it is interesting that the focal point of today's hearing is the phaseout of foreign fishing. I remember spending a good deal of time on the Senate floor back in 1976 talking about the same thing. You'll recall that was the year of our Bicentennial. Coincidentally that was also the year we decided to pass the Magnuson Act and extend U.S. fishing jurisdiction 200 miles to protect our fishery resources from the excesses of foreign fishing fleets.

I look forward to learning more today about the various ideas for further Americanization of our seafood resources. Obviously, the Magnuson Act has already made a major contribution to conserving those resources—the foreign harvesters remain in only small numbers on the Atlantic and Gulf Coasts where their "pulse fishing" methods once threatened fishery stocks with annihilation. But I certainly understand concerns of American fishermen and processors whose operations are affected by the presence of foreign vessels—whether because of gear conflicts or unfair competitive advantages. In any event, if the law is changed to accelerate the phaseout of foreign vessels, we must ensure that all sectors of the U.S. industry are treated equitably. For example, a nationwide phaseout could negatively affect efforts to devise reciprocal fishing arrangements with Mexico for East Coast fishermen.

Before closing, I would like to state my support for including habitat and safety considerations in fishery management plans. In addition, I will give careful thought to the question of Regional Council appointments. I am concerned that commercial fishermen are not well represented in the Gulf and South Atlantic Council. On the South Atlantic Council, for instance, there is only one commercial representative out of the eight nongovernmental members.

No matter what amendments may be made to the Magnuson Act, it is essential that we reauthorize the act at levels that allow for effective conservation and management. I urge my colleagues to proceed expeditiously with the reauthorization bill once this hearing is complete.

99TH CONGRESS
1ST SESSION

S. 747

To improve the administration and enforcement of the Magnuson Fishery and Conservation Management Act.

IN THE SENATE OF THE UNITED STATES

MARCH 26 (legislative day, FEBRUARY 18), 1985

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To improve the administration and enforcement of the Magnuson Fishery and Conservation Management Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Marine Fisheries Improvement Act of 1985".

FINDINGS AND PURPOSES

SEC. 2. Section 2 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801) is amended—

(1) in subsection (a) by inserting at the end thereof the following:

"(8) Effective management of fishery resources requires effective action to conserve, restore, maintain, and enhance fishery habitat.";

(2) in subsection (b)(1)(A) by striking out ", except highly migratory species";

(3) in subsection (b)(5) by striking out "and" after the semicolon;

(4) in subsection (b)(6) by striking out the period at the end thereof and inserting in lieu thereof "; and"; and

(5) by adding at the end of subsection (b) the following:

"(7) to foster the planning of actions necessary to ensure that fishery habitats are conserved, restored, maintained, and enhanced so that the other purposes of this Act can be attained.".

DEFINITIONS

SEC. 3. Section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802) is amended—

(1) in paragraph (6) by inserting after "mammals," the following: "and" and by striking out ", and highly migratory species";

(2) by redesignating paragraphs (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), and (27) as paragraphs (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), and (28), respectively; and

(3) by inserting after paragraph (15) the following:

"(16) The term 'managed species' means any species managed pursuant to a preliminary management plan or a fishery management plan.".

HIGHLY MIGRATORY SPECIES

SEC. 4. Section 103 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1813) is repealed.

FULL OBSERVER COVERAGE PROGRAM

SEC. 5. (a) Section 201(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(i)) is amended—

(1) by amending paragraph (2)(B) to read as follows:

"(B) with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone, the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impracticable; or"; and

(2) inserting at the end thereof the following:

"(7) Any owner and operator of a foreign fishing vessel intending to fish within the fishery conservation zone shall submit to the Secretary a schedule of fishing for each three-month period beginning January, April, July, and October, of each year at least 30 days prior to the beginning of each

period. The schedule shall contain the name of each foreign fishing vessel intending to fish within the fishery conservation zone, the expected date of arrival of each vessel, the expected date of departure, and any other information the Secretary may require.

"(8)(A) The Secretary shall be notified immediately of any substitution of vessels or any cancellation of plans to fish in the fishery conservation zone for foreign fishing vessels listed in the schedule submitted pursuant to paragraph (2).

"(B) The Secretary shall be notified immediately if an arrival date of a foreign fishing vessel will vary more than five days from the date listed in the schedule submitted pursuant to paragraph (7) and shall also be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the foreign fishing vessel shall not engage in fishing until an observer is available and placed aboard the vessel.".

(b) Paragraph (6) of section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(6)) is amended by adding at the end thereof the following new subparagraph:

"(C) The Secretary shall not approve any permit for a vessel on which the facilities of the vessel for quartering of a United States observer, or the carrying out of observer func-

tions are so inadequate or unsafe that the health or safety of an observer would be jeopardized.".

NATIONAL STANDARDS

SEC. 6. Section 301(a)(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851(a)(6)) is amended by striking out the period at the end thereof and inserting in lieu thereof "and shall take into account the impact of vessel safety.".

REGIONAL FISHERY MANAGEMENT COUNCILS

SEC. 7. Section 302(b)(2)(A) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(b)(2)(A)) is amended by—

(1) striking out "knowledgeable or experienced" and inserting in lieu thereof "knowledgeable and experienced"; and

(2) inserting at the end thereof the following: "Each Council shall have a representative number of commercial and recreational fishermen including at least one practicing commercial fishermen.".

CONTENTS OF FISHERY MANAGEMENT PLANS

SEC. 8. (a) Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is amended—

(1) in subsection (a)(5), by inserting after "Secretary" the following: "and the Executive Director of the Council"; and

(2) in subsection (d) by inserting after "submitted to the Secretary" the following: "and the Executive Director of the Council".

(b) Section 302(i)(3)(A)(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(i)(3)(A)(i)) is amended by inserting after "national security classification" the following: "or is a confidential statistic as determined under section 303(d)".

HABITAT CONSERVATION

SEC. 9. (a) Section 303 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853) is amended by inserting at the end thereof the following new subsection:

"(f)(1) Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall, to the extent practicable, assess and specify for the stock or fishery and its food base—

"(A) life requirements and size and distribution for the purpose of identification and specific delineation, where possible, of habitat necessary for production;

"(B) on going or potential actions that may adversely affect habitat identified in clause (A); and

"(C) measures or actions to conserve, restore, maintain, or enhance habitat necessary for fishery production, including establishment of priorities for implementing conservation activities.

"(2) Existing plans for managed species shall be amended to comply with the requirements of subsection (f)(1) within a reasonable period of time.

"(3) The Secretary may not disapprove a management plan which contains incomplete information on a habitat due to data unavailability or uncertainty of analysis.

"(4) The Secretary shall provide the Council with the data necessary to prepare the fishery management plan and shall, to the extent possible, be responsive to the Council's needs for further data collection or analysis to address habitat needs for fisheries.

"(5) The Council need not include the information required by subsection (f)(1) in a fishery management plan for any fishery if it determines and the Secretary concurs, that habitat conservation, restoration, maintenance, and enhancement is not a significant factor in achieving the purpose of the Act for that fishery.

"(6) Any recommendation made by the Council to the Secretary and other Federal officials to conserve, restore, maintain, or enhance habitat necessary for the production of any fishery shall be responded to by those individuals within sixty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Council with a detailed explanation of the reasons why those recommendations were not followed or adopted. The Secretary and

other Federal officials shall give full consideration to any measures recommended in a plan for a managed species and to any recommendations by any Council relating to conservation, restoration, maintenance, or enhancement of the habitat of any managed species when the Federal officials fund, authorize, or construct any activity which may affect the habitat of a managed species.".

(b) Section 304 of the Magnuson Fishery Conservation and (16 U.S.C. 1854) is amended by inserting at the end thereof the following:

"(g) The Secretary shall establish and implement a formal regional habitat planning and coordination process. The process shall be used to—

"(1) identify the fishery resources of importance and the major habitat threats to these resources;

"(2) enumerate the identified habitat issues in order of priority;

"(3) develop strategies to address these issues; and

"(4) oversee the integration of habitat consideration throughout the programs of the National Oceanic and Atmospheric Administration.

In this process, the Secretary shall consult with the Councils, States, and others, as appropriate. From time to time but not

less than every three years, the Secretary shall publish the result of the regional processes.".

DISLOCATION COMPENSATION PROGRAM

SEC. 10. (a) Section 303(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(b)) is amended by—

(1) redesignating clauses (7) and (8) as clauses (8) and (9), respectively; and

(2) inserting after paragraph (6) the following:

"(7) if a limited access system is established under paragraph (6), establish a dislocation compensation program subject to subsection (g);".

(b) Section 303 is further amended by adding at the end thereof the following new subsection:

"(g)(1) For purposes of this subsection, the term 'dislocation compensation program' means a plan, whether administrated by the Secretary or by the States represented on the Council that established the plan, for compensating, in whole or part, fishing vessels owners for the loss or reduction of livelihood that results from the implementation of a limited access system under subsection (b)(6). Such compensation may include purchase of the vessels of such owners, financial assistance to modify vessels for use in other fisheries, or cash benefits. A dislocation compensation program may be funded, in whole or part, through fees levied under subsection (b)(1).

"(2) All fees collected under a dislocation compensation program shall be deposited into the Fisheries Dislocation Compensation fund established under paragraph (3).

"(3)(A) There is established in the Treasury of the United States a revolving fund known as the Fisheries Dislocation Compensation fund (hereinafter in this paragraph referrred to as the 'Fund'). Each dislocation compensation program established under subsection (b)(7) shall have a separate account in the Fund and the fees collected under the program that are deposited into the Fund shall be credited to that account.

"(B) The Secretary shall withdraw funds credited to any account at such times and in such amounts as may be necessary for the administration of the dislocation compensation program concerned.".

(c) Section 304 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854) is amended by striking out the period at the end of subsection (d) and inserting in lieu thereof the following: "; except that if fees are also used to fund, in whole or in part, a dislocation compensation program under section 303(b)(7), the level of fees shall not exceed the administrative costs incurred in issuing the permits and the costs of funding that program to the extent that the funding is intended to be covered by the fees.".

CIVIL PENALTIES

SEC. 11. Section 308(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858(a)) is amended by adding at the end thereof the following: "The Secretary shall not assess a final civil penalty greater than the penalty first assessed by written notice unless—

"(1) significant information concerning the alleged violation or alleged violators not available to the Secretary at the time of the original assessment becomes available; or

"(2) significant circumstances arise subsequent to the original assessment which appropriately may affect the penalty assessment.".

AUTHORIZATION OF APPROPRIATION

SEC. 12. Section 406 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1882) is amended by adding at the end thereof the following new paragraph:

"(12) $69,000,000 (of which not to exceed $7,500,000 is for the operation of the Councils) for each of the fiscal years 1986, 1987, 1988, 1989, and 1990.".

99TH CONGRESS
1ST SESSION

S. 1245

Entitled the "Fishery Conservation and Management Act Amendments of 1985".

IN THE SENATE OF THE UNITED STATES

JUNE 5 (legislative day, JUNE 3), 1985

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

Entitled the "Fishery Conservation and Management Act Amendments of 1985".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

MANAGEMENT AUTHORITY OVER STRADDLING STOCK

SEC. 2. The Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (hereinafter referred to as the "Act") is amended—

(1) in section 3 (16 U.S.C. 1802) by—

(A) redesignating paragraphs (23) through (27) as paragraphs (24) through (28), respectively; and

(B) inserting after paragraph (22) the following new paragraph:

"(23) The term 'straddling stock' means any stock of associated species that are located within the fishery conservation zone and in the area beyond and adjacent to the zone"; and

(2) in section 102 (16 U.S.C. 1812) by adding at the end thereof the following new paragraph:

"(4) All straddling stock beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nationals' territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.".

NEGOTIATIONS BY THE SECRETARY OF STATE

SEC. 3. (a) Section 202 of the Act (16 U.S.C. 1822) is amended by inserting at the end thereof the following new subsection:

"(f)(1) NEGOTIATIONS FOR RECOGNITION OF FOREIGN ZONES.—Within ninety days after the date of enactment of the Fishery Conservation and Management Amendments of 1985, the Secretary of State shall begin negotiations with each nation fishing within the fishery conservation zone to include in each governing international fishery agreement—

"(A) a provision acknowledging the zone of exclusive fishery management authority of each such foreign nation; and

"(B) a provision for implementing a policy of reciprocity in fishing as set forth in section 201(g) (16 U.S.C. 1921(g)).".

(b) Section 201(e)(1)(E)(viii) is amended to read: "whether, and to what extent, such nation is cooperating with the United States in the negotiations as set forth in section 202(f)(1); and".

(c) Section 201(c)(1)(E) is further amended by deleting "and" at the end of clause (vii) and by inserting after clause (viii) the following new clause:

"(ix) whether, and to what extent, such nation utilizes services offered by United States industry in support of fishing activities in the United States Fishery Conservation Zone, including the supplying of petroleum products, foodstuffs, and the transportation of personnel.".

(d) Within 60 days after the date of enactment of this Act, the Secretary of State shall begin negotiations with the Governments of Canada and Japan to eliminate high seas interception of salmon of United States origin within the framework of the International North Pacific Fisheries Com-

mission established pursuant to the International Convention for the High Seas Fisheries of the North Pacific Ocean with a protocol relating thereto signed at Tokyo, Japan, on May 9, 1952, and the North Pacific Fisheries Act of 1954 (16 U.S.C. 1021 et seq.).

INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION

SCIENTIFIC RESEARCH

SEC. 4. (a)(1) In the administration of the North Pacific Fisheries Act of 1954 (16 U.S.C. 1021 et seq.), the United States Section may—

(A) in consultation with the National Marine Fisheries Service, initiate multinational symposia and provide other forums, including all nations, as determined by the United States Section in consultation with the National Marine Fisheries Service, that have a significant interest in North Pacific fishery matters, for the purpose of exchanging of scientific information concerning all fishery stocks of the North Pacific; and

(B) initiate, in consultation with the National Marine Fisheries Service, a review of multinational cooperative development plans for North Pacific fishery stocks.

(2) The United States Section may employ and determine the salary of a professional administrator having scientific expertise and training in fisheries to ensure that the ac-

tivities described in paragraph (1) are initiated on a timely basis.

(b) There are hereby authorized to be appropriated such sums as are necessary to fund the expanded activities of the United States Section provided for in this section.

ALASKAN STATE JURISDICTION

SEC. 5. (a) Section 306(a) of the Act (16 U.S.C. 1856(a)) is amended—

(1) in subparagraph (B) of paragraph (2) by striking out "and" at the end thereof;

(2) in subparagraph (C) of paragraph (2) by—

(A) striking out "(for the purpose of regulating fishing other than any species of crab)";

(B) striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon and "and"; and

(C) adding at the end thereof the following new subparagraph:

"(D) to the waters of south-central Alaska that are north of the line from Elizabeth Island to Cape Douglas.".

(b) Section 306(c) of the Act (16 U.S.C. 1856(c)) is amended by inserting the following new paragraph at the end thereof—

"(5) EXCEPTION.—A foreign vessel may engage in fish processing within the boundaries of the State of Alaska sea-

ward of the baseline from which the territorial sea is measured provided it satisfies all of the requirements of this subsection applicable to the internal waters of a State and the Governor of the State of Alaska determines, after consultation with the Secretary and the North Pacific Fishery Management Council, that the transfer of United States harvested fish to the foreign vessel within the internal waters of a State would be impossible or unsafe because of physical conditions.

LAW OF THE SEA TREATY REFERENCES

SEC. 6. (a)(1) Section 401 of the Act (16 U.S.C. 1881) is repealed.

(2) The table of contents of the Act is amended by striking out the item relating to section 401.

(b) Section 2(c) of the Act (16 U.S.C. 1801(c)) is amended—

(1) in paragraph (4) by striking out the semicolon and "and" at the end thereof and inserting in lieu thereof a period; and

(2) by striking out paragraph (5).

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. Section 406 of the Act (16 U.S.C. 1882) is amended by adding at the end thereof the following new paragraphs:

"(12) $68,555,000 for the fiscal year ending September 30, 1986.

"(13) $71,639,975 for the fiscal year ending September 30, 1987.".

FOREIGN FISHING FEES

SEC. 8. Section 204(b)(10) of the Act (16 U.S.C. 1822) is amended by inserting at the end thereof the following new subparagraphs:

"(B) Fees shall be annually increased by 50 percent over the cost of carrying out the provisions of the Act.

"(C) Each annual increase in fees will be in addition to the total fee level established under subparagraph (B) for the preceding fiscal year.".

FUNDING OF REGIONAL FISHERY MANAGEMENT COUNCILS

SEC. 9. The President shall include with the budget submitted under section 1105 of title 31, United States Code, for each fiscal year a separate statement which specifies the total amount obligated or expended in the most recently completed fiscal year to carry out the provisions of section 302(h) of the Act (16 U.S.C. 1852(h)) relating to the functions of the regional fishery management councils.

REVIEW OF PETITIONS BY THE UNITED STATES TRADE REPRESENTATIVE

SEC. 10. Section 2411(b) of title 19, United States Code, is amended by adding at the end thereof the following paragraph:

"(3) reduce or eliminate fishery allocations provided under section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) when the action involves an unjustifiable, unreasonable, or discriminating act, policy, or practice which burdens United States commerce in fish or fishery products.".

99TH CONGRESS
1ST SESSION

S. 1386

To promote the Americanization of domestic marine fishery resources, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 1985

Mr. GORTON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To promote the Americanization of domestic marine fishery resources, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201(d) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(d)) is amended to read as follows:

"(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—(1) The total allowable level of foreign fishing, if any, for any nation which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States—

"(A) for calendar year 1986 shall be 60 percent of the total allowable level of such foreign fishing during calendar year 1985;

"(B) except as provided in paragraph (2) of this subsection, for calendar year 1987 shall be reduced by one-third of the total allowable level of such foreign fishing during calendar year 1986;

"(C) except as provided in paragraph (2) of this subsection, for calendar year 1988 shall be reduced by two-thirds of the total allowable level of such foreign fishing during calendar year 1986; and

"(D) except as provided in paragraph (2) of this subsection, for calendar year 1989 and each calendar year thereafter may be as large as 65,000 tons of fish per Council's geographical area but in no case shall exceed such nation's total allowable level of such foreign fishing in such geographic areas for calendar year 1985.

The allowable levels of foreign fishing specified in this paragraph shall apply only to the fishing activities of a foreign nation which in calendar year 1985 were authorized in an amount of 65,000 tons or more in any Council's geographic area. Allocations of allowable levels of foreign fishing for all other fisheries shall be made pursuant to subsection (e) of this section, after consultation with the applicable Council.

"(2) After January 1, 1987, any nation that has an allowable level of such foreign fishing which is equal to or greater than 65,000 tons of fish in any Council's geographic area may, for calendar years 1987 through 1994, be granted an allowable level for each calendar year greater than the allowable levels specified in paragraph (1) of this subsection, if such nation has entered into a bilateral international fishery agreement with the United States in accordance with paragraph (3) of this subsection.

"(3)(A) The Secretary of State, in cooperation with the Secretary, may enter into bilateral international fishery agreements with any foreign nation identified in paragraph (2) of this subsection regarding the total allowable level of foreign fishing with respect to each such fishery for the calendar years 1987 through 1994. Any such agreement must provide benefits which both promote the development of the United States fishing industry and are of a magnitude sufficient to justify extending a nation's foreign fishing beyond the levels specified in paragraph (1) of this subsection.

"(B) In conducting negotiations regarding any such agreement, the Secretary of State, in cooperation with the Secretary, shall establish, designate and consult with industry advisory committees which shall be composed of an equal number of representatives of harvesters of United States harvested fish and United States fish processors who are in-

volved in fishery activities in the geographical region where the foreign activity under discussion is to occur. Such persons shall not be considered Federal employees and shall not be compensated for their service as members of such committee.

"(C) Under no circumstances may any foreign nation's total allowable level of foreign fishing after January 1, 1995 exceed the amount described in paragraph (1)(D) of this subsection.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, the amount by which foreign fishing is reduced under this section shall be divided equally and be placed into two separate reserve categories. One reserve shall be for the benefit of United States fishing vessels delivering to foreign processors, and the quantities of fish in such reserve may be harvested only by such vessels in accordance with this Act. The other reserve shall be for the benefit of United States fish processors, and the quantities of fish in such reserve shall be harvested only by United States fishing vessels delivering their catches to such processors or processing their own catches in accordance with this Act.

"(B) In the case of Pacific pollock, 40 percent of the amount by which foreign fishing is reduced under this section shall be placed in the reserve for harvesting by United States fishing vessels delivering to foreign processors, and 60 per-

cent of such amount shall be placed in the reserve for the benefit of United States fish processors.

"(C) If such reserves are not utilized, they shall continually accumulate and remain is such reserves until they are utilized by the appropriate sectors of the United States fishing industry.

"(D) If the growth of either United States fishing vessels delivering to foreign processors or United States fish processors exceeds the amount placed in such reserve categories, the other preferences specified in this Act for such processors and harvesters shall take precedence, and the allowable level of foreign fishing shall be reduced accordingly, except that the overall increase of United States fishing vessels delivering to foreign processors may not exceed the amount of fish placed in the reserve established for such vessels.

"(5) The allowable levels of foreign fishing authorized by this subsection or by a bilateral international fishery agreement shall be reduced any time the growth of the United States fishing industry exceeds the reductions in foreign fishing established in this subsection.".

SEC. 2. Section 201(e)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821(e)(1)) is amended--

(1) in subparagraph (A), by adding the following at the end: "Any such determination must be consistent with the restrictions specified in subsection (d) of this section."; and

(2) in subparagraph (E)(viii), by inserting "fishery" immediately after "other".

SEC. 3. Section 306(c)(4)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1856(c)(4)(C)) is amended by inserting immediately before the period the following: ", and such vessel's activities do not result in the vessels of such foreign nation receiving more fish than would be permitted under title II of this Act".

Senator GORTON. As Senator Stevens pointed out, this is of interest to more than the Pacific Northwest or even the Pacific coast. We welcome our distinguished colleague from New Jersey, who has introduced a bill amending the Magnuson Act. Senator Lautenberg is a former member of this committee. We wish you were still on this side of the table, but we are happy to see you, Frank.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you very much, Senator Stevens and Senator Gorton. I am pleased to be back with my Commerce Committee colleagues. I must confess that I miss the committee meetings here.

I am pleased to be here to testify also as a member of the NOPS committee to discuss amendments to the Magnuson Fishery Conservation and Management Act.

One point is clear: The Magnuson Act has been a good thing for U.S. fisheries, and all of us who are interested in commercial and recreational marine fisheries would agree. Before the act, unregulated foreign fishing depleted marine fishery stock and harmed the economic well-being of the U.S. fishing industry. With implementation of the Magnuson Act, those effects are being reversed.

A finding by the Mid-Atlantic Fishery Management Council in my region is very instructive. The council estimates that its management plans increased income by over $100 million between 1982 and 1984. Last year, foreign fishermen in the primary fishing areas off New Jersey in 1984 caught one-fourth of the catch that they had in 1978.

While the Magnuson Act has increased the catch for U.S. fishermen and increased product for U.S. processors, some problems remain, problems in the implementation of the act and problems in the management of U.S. fisheries, particularly on the east coast.

My bill, the Marine Fisheries Improvement Act, is an effort to address some of these problems, and that is why a biparisan coalition of east coast Senators, including Senators Roth, Heinz, my colleague Bill Bradley, Moynihan, Dodd, Weicker, and Kerry, have joined in cosponsoring the bill. I would like to focus my testimony on two areas addressed by my bill.

First, something must be done to stop Japanese longlining for tuna off the east coast. Foreign tuna longlines are up to 80 miles long. These vessels fish with over 2,000 hooks and drift with the ocean current. It leaves a swath of territory that you dare not cross. Foreign tuna longliners entangle domestic longlines. But more importantly, these longlines preempt favorite fishing grounds. For example, if U.S. fishermen stay 2 miles on either side of the Japanese longlining operation 80 miles long, just one Japanese boat would preempt 320 square miles of prime fishing ground.

Under the Magnuson Act, the United States has no authority to directly manage tuna fisheries. The act excludes "highly migratory species" and then defines this term to include tuna and only tuna. There are other fish that are migratory—billfish and swordfish—and the United States has the authority under the act to manage them.

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In 1982, the United States took action under the billfish preliminary management plan to address the conflicts caused by Japanese tuna longlines. Tuna longliners were catching billfish along with tuna. But with the rapid increase in domestic longlining over the past few years, the billfish plan is now inadequate. The existing Japanese longline fishery continues to preempt U.S. longliners and interferes with our management of billfish and swordfish.

If anyone believes the problem doesn't exist, he need only examine the reports of the National Marine Fisheries Service. The number of cases of gear conflicts rose more tenfold between 1983 and 1984, with the greatest increase at the end of the year. So we see an accelerating curve in conflicts.

Senator Gorton, when you introduced your bill to amend the Magnuson Act a few days ago, you said that: "Approaches to the full Americanization of our fisheries differ, but the goal is shared by all." Those of us on the east coast also share the goal, and it is simply intolerable that Japanese longliners are still able to preempt our fishermen from prime fishing grounds within the 200-mile limit.

My bill would address this problem. It would bring tuna under the 200-mile limit. Now, I recognize this is controversial, and I want to say that I am willing to explore any other ways to address this problem. As all of you know, there has been preliminary discussion with committee staff and others trying to resolve it. But one way or another, Japanese longlining preemption of prime U.S. fishing areas has got to stop.

The second area I want to discuss is the protection of fishery habitat. My bill would give the fishery management councils explicit authority to address habitat conservation problems. When the Congress passed the Magnuson Act, it made the basic decision that marine fisheries should be managed at the regional level by those with expertise in all aspects of marine fisheries management. But the councils cannot really manage the marine fisheries if they are not involved in conserving the area that marine fish inhabit during the various stages of their lives and development.

Just this past Friday, the Environment and Public Works Committee, on which I serve, held a hearing to review the status of Atlantic striped bass. Every witness, including the National Marine Fisheries Service, the Atlantic State Marine Fisheries Commission, and commercial and recreational fishermen, agreed that just limiting the fishery harvest is not enough to conserve the striped bass. Every witness agreed that environmental pollution and loss of habitat also had to be addressed. Fishery managers have to address habitat if we really want effective fisheries management.

My bill would make habitat conservation an integral part of the Magnuson Act. It codifies and builds on some of the administrative efforts initiated by the National Marine Fisheries Service. It does so in a way that will not interfere with fishery plan development by the councils. And quite honestly, I cannot understand how anyone concerned about fisheries management would oppose those provisions.

Even though I am no longer a member of the Commerce Committee, my interest in marine fisheries issues remains very strong. Commercial and recreational marine fisheries in New Jersey con-

tribute roughly $1 billion a year to the State's economy, and as a member of the National Ocean Policy Study and the State, Justice, and Commerce Appropriations Subcommittee I intend to actively pursue legislation that is critical to the well-being of the marine fisheries in my State.

Thank you, Mr. Chairman. I look forward to working with members of the committee in amending the Magnuson Act.

Senator STEVENS. Why do you not just come up and join us. As a former member of the committee, I think you have a vital interest, Senator, and we would be pleased to have you join us if you would.

Senator LAUTENBERG. I appreciate that.

Senator STEVENS. We note the chairman of the full committee and also chairman of the National Ocean Policy Study is here now. Senator, do you have any comments?

The CHAIRMAN. I do not, Mr. Chairman. Thank you very much.

Senator GORTON. Our first panel will be: the Honorable Edward Wolfe, Deputy Assistant Secretary of State; and William Gordon, Assistant Administrator for Fisheries.

Senator STEVENS. While you are taking your seats, let me state for my friend here from New Jersey, I think anyone who is running an 80-mile line is managing an unconscionable amount of gear. I cannot understand that. I hope some people from the National Marine Fisheries Service and others involved in the fishing may comment on that. But I would view that the same as I would a net that has been cut loose and is just marauding. As far as the fisheries are concerned, there is no way to put a sign on those hooks saying "tuna only. '

Senator GORTON. Mr. Wolfe, we have a long list of witnesses today. We hope you will summarize your testimony. And both of your entire written statements will of course be in the record.

STATEMENTS OF EDWARD E. WOLFE, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE; AND WILLIAM GORDON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. WOLFE. Thank you, Mr. Chairman. I will summarize my testimony. If the committee will allow me approximately 10 minutes, I think I can do it. I have 28 pages of formal testimony I will submit for the record, and with your permission, I will be as brief as possible and try to limit it to 10 minutes.

Looking out in the audience today, I noticed a cast of thousands. It seems as though every segment of the U.S. industry is represented today. I think these hearings provide a perfect opportunity to flush out any problems that we have with the Magnuson Act, and certainly to suggest alternatives to deal with them. We did this on the House side. We worked closely with the House staff during their considerations of the Magnuson Act reauthorization, and we look forward to working with the Senate staff as well.

Everyone here today from the U.S. sector is here to promote Americanization of U.S. fisheries. I think if we starting off from that point as I believe we are, the remaining question is one of me-

chanics: How do we get there? So, let me begin my summary of the testimony before you.

We understand that these bills, the three bills that have been introduced, as well as other bills that have been introduced in the House, reflect the serious concern of Congress with the administration of the Magnuson Act and the effectiveness of U.S. fisheries policy. When my staff was preparing material for this session today, I suggested to them it might be useful to have a flow chart to track the legislation because, as you know, there are some complex provisions in the bills. We decided against the flow chart, but I think I have a feeling for what your interests are and a feeling for what the interests of the industry are and I appreciate the opportunity to share with you our views today.

Our goal is full utilization of our fisheries resources by the U.S. industry in our EEZ. We have not yet realized that goal, but it is our position that we are making tremendous strides.

As enacted in 1976, the Magnuson Act specifically excluded highly migratory species of tuna from fisheries resources over which the United States has sovereign rights to explore, exploit, conserve, and manage. It is our position that there was, and remains today, good reason to continue that position.

We have long held the view in our country that tuna must be managed cooperatively on an international basis by all countries that fish for tuna, as well as by those countries off whose coasts the stocks of tuna pass. I might add that we have recently begun negotiating a tuna access agreement with 15 island nations in the South Pacific. We are making good progress in those talks and hope that we may be able to conclude a treaty early next year.

It is my view, Mr. Chairman, that without our present law and without our present position regarding tuna jurisdiction, we would have had a difficult time achieving the progress that we have made to date. If we were to change our law regarding tuna jurisdiction, it is my judgment that we would be unlikely to see a successful conclusion to these efforts in the South Pacific. However, we support the intent of S. 1387 to create a more orderly scheduling process for foreign fishing in our zone and to facilitate the deployment of U.S. observers.

With respect to S. 1245, let me briefly relate a number of recent developments that may bear on the problems the bill seeks to address. Mr. Chairman, as you know, we have sought in recent years to pursue Americanization of our fishery resources, to increase coordination with, and reliance on, our fishing industry. In particular, we have encouraged our industry's efforts to negotiate agreements with foreign industry representatives to expand their purchases of U.S. fishery products in exchange for allocations.

This process has not been easy, but it has achieved some impressive results. For example, in 1985 we expect our industry will sell 330,000 metric tons to Japan through joint ventures and over-the-side sales. This does not include sales that will be completed this year with Korea, Poland, and the Soviet Union. As Senator Stevens pointed out earlier, the Japanese industry has agreed to invest in shoreside processing facilities in Alaska. We think this is also a plus.

Regarding salmon interceptions, a very important issue for many of you, we acknowledge that Japan harvests salmon beyond and within our exclusive economic zone. The Magnuson Act gives the United States domestic authority to conserve and manage salmon of U.S. origin on the high seas as well as within the U.S. EEZ. As many of you, particularly from Alaska, are more aware than I, these salmon are extremely important to many subsistence and commercial fishermen in western Alaska. Quite frankly, our discussions in the INPFC have not produced the results that we desire. Consequently, we have initiated bilateral discussions with Japan to address the salmon interception problem.

In our first meeting a month or two ago, each side presented its position and my Japanese colleagues and I discussed informally how to proceed. We have scheduled another round of discussions for August 19 through 22 in Seattle. I believe that a few of the staff members from the committee will be present during our discussions. We are working closely with the Alaska Department of Fish and Game, the Alaska delegation, NMFS, and the U.S. fisheries industry to develop an effective U.S. position for the upcoming session.

To date, Japan has received allocations this year of 729,937 metric tons of fish in our zone. Encouraged by the December 1984 industry-to-industry agreement, we indicated to the Japanese that they could expect that their allocation for 1985 would reach approximately 900,000 metric tons by the end of the year. However, we have made it clear that we remain concerned about progress on certain aspects of the agreement.

One of the most important of these is the Japanese commitment to purchase U.S. processed pollock products by the end of 1985. The Japanese industry thus far has not finalized any contracts for purchases, but rather has pursued investments in two shoreside processing operations in Alaska. The Department is satisfied with this recent action, but we intend to monitor closely all activities and developments in this area and of course areas involving other segments of the industry.

The high seas interceptions of U.S. salmon by Taiwan have been a matter of great concern. We have asked Taiwan to adopt regulations in its high seas gillnet fishery to minimize these interceptions. In this regard, the Alaska Department of Fish and Game, NMFS, congressional staff, and the Department of State developed a proposal for consideration by Taiwan. Taiwan has accepted this proposal and we are working now on this preliminary agreement to restrict their fishing in certain areas.

The Hill was very instrumental in putting this package together, particularly the staff. In addition, Senator Stevens recently met with Secretary Shultz and Senator Murkowski had a staff person present at this meeting. We are moving in the right direction. I think the right signal was sent to the Taiwanese and I believe that we are close to a resolution of the Taiwanese interception problem.

Turning to specific provisions of S. 1245, I note that the bill would authorize U.S. management of straddling stocks; that is, those stocks of fish located both within the EEZ and in areas adjacent to and beyond it, except when they are found in a foreign nation's territorial sea or fishing zone as recognized by the United

States. Thus far, U.S. fishery conservation and management efforts have largely centered on stocks located within the EEZ.

As Senator Stevens rightly noted in his statement introducing S. 1245, the problem of conserving and managing straddling stocks may become increasingly important in the years ahead as the U.S. industry displaces foreign fleets within our zone. For this reason, we believe it is appropriate that we begin considering how to deal effectively with this issue.

We are not aware that any nation is fishing at present outside our EEZ for stocks over which we now have jurisdiction only in our zone. As I mentioned previously, however, present inactivity should not deter us from considering how to deal with this eventuality. As we displace foreign pollock fisheries within our zone, it is possible that foreign fisheries for straddling stocks will sprout up beyond it.

Should this materialize, we believe there are a range of alternatives which would be available to us, from negotiations with those conducting these fisheries to ensure they do not undermine our conservation efforts within our zone, to sanctions against those who choose to ignore our conservation goals.

With respect to reciprocity in fishing, we believe that the Magnuson Act and our GIFA's currently establish such a policy. A standard article in each of our GIFA's provides that, should we indicate to a foreign government that nationals or vessels of the United States wish to engage in fishing in that nation's fishing zone, the foreign government must allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with the GIFA.

Section 3 of the bill would also establish new allocation criteria in addition to those already contained in the Magnuson Act. We support these additions. However, section 3 of the bill would add new criteria at the expense of the so-called basket clause. We have stated before, Mr. Chairman, and I will state again, that the Department believes it is important that this provision be retained in order to ensure that the administration has the flexibility it needs to factor appropriate foreign policy concerns into our fishing relations with other countries.

Having said that, we are certainly aware of the concerns within the fishing industry and the Congress concerning factors unrelated to fisheries in determining foreign allocations. I would only add that we believe we have been very judicious in using this particular clause, using it only three times since 1977.

Section 8 of the bill would increase foreign fishing fees by 50 percent over the cost of carrying out the provisions of the Magnuson Act in the previous year. I submit that this provision would ensure a phaseout of foreign fishing, perhaps even faster than the direct phaseout proposals currently before the committee. But such annual increases in foreign fishing fees will not necessarily, in our opinion, hasten Americanization of our fisheries.

The administration believes that the determination of the level of foreign fees should be consistent with the fair value of the fish, the goals of the United States for the development of each fishery, and foreign cooperation in meeting these goals. We favor a simple provision allowing more flexibility in setting fees unencumbered by

arbitrary increases and/or legislative formulas, and are looking forward to working with your staff to that end.

Finally, Mr. Chairman, section 10 of S. 1245 would enable the U.S. Trade Representative to reduce or eliminate fishery allocations provided under the Magnuson Act when an action of a foreign nation involves an unjustifiable, unreasonable, or discriminating act, policy, or practice which burdens U.S. commerce in fish or fishery products. However, we believe that the administration already has the authority to do this under existing law. Therefore, we must oppose this section of the bill.

In addition, we question the standard contained in section 10. The new fisheries regime established by the Magnuson Act involves, as you know, a rather complex relationship among allocations, trade, joint ventures, economic cooperation, and investments. In this regard, trade in fisheries products is quite different from other trading.

Consequently, we believe it may be difficult for the U.S. Trade Representative to determine when an action of a foreign nation involves an unjustifiable, unreasonable, or discriminating act, policy, or practice which burdens U.S. commerce in fish or fishery products. We believe the inclusion of this provision could restrict the U.S. Government's flexibility in negotiating with its fishing partners, possibly to the detriment of the industry.

With respect to S. 1386, a bill "to promote the Americanization of domestic marine fishery resources," as Senator Gorton noted in his statement introducing the bill, approaches to Americanization of our fisheries differ, but the goal is shared by all. The critical question is, what policy will best achieve this goal?

We are concerned that the approach taken in this bill may not be in the best interest of our industry at this time. We believe it involves a number of significant risks. Rather than lead to a rapid phasing in of Americanization, it could lead to unused resources sitting in reserve accounts that may not be tapped by U.S. harvesters. Moreover, these reserves could not be tapped to promote purchases of processed fish from U.S. processors.

I would just refer you to the study by Natural Resource Consultants of Seattle for the Highliners Association in April 1985 that I think made a number of important observations. The study points out that we have achieved complete Americanization of sablefish in the Gulf of Alaska with harvests by U.S. trawlers and line vessels estimated to exceed 1 million metric tons during 1985. The study goes on and on. I think it points out that progress has been made.

I believe that under our existing law and policy, the United States has considerable leverage to increase sales of U.S. fishery products as a condition of granting access to our resources in our zone. To accelerate this process, as I have mentioned, the bill would establish certain reserves. It is unclear to us, Mr. Chairman, how the establishment of a reserve amount that could only be tapped by U.S. fishermen delivering their fish to U.S. processors will necessarily stimulate growth in the processing sector.

In the interests of time, I would refer you to page 24 of our longer draft for further explanation of our concerns in this area.

We do have concerns, Mr. Chairman, with regard to the mechanics of S. 1386. Once again, we have detailed these concerns in our

formal statement and look forward to working with the staff on these amendments.

One final note with respect to S. 1386 involves section 2 of the bill. This section would limit the discretion of the Secretary of State in taking into account foreign policy issues when making allocations. As I've mentioned earlier, Mr Chairman, we do not support either deleting this clause or restricting it as contemplated in section 2.

Before I close, Mr. Chairman, let me mention that the most recent amendment to S. 1245 regarding the phaseout of foreign fishing was received by the Department only late last week, and we have not had adequate time to study it. We will do this and submit our written comments to the committee as soon as possible.

However, we do think it is important that in considering any fishery legislation, we keep in mind the optimum yield and the importance of utilizing U.S. fishery resources to further develop the U.S. fishing industry—our ultimate goal being full development and utilization by our industry of our resources.

That concludes my statement, Mr. Chairman. I hope I have made it within the time limit, and I would certainly be happy to respond to any questions that you may have.

[The statement follows:]

STATEMENT OF EDWARD E. WOLFE, JR., DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman, and members of the committee, I am pleased to be here today to provide the views of the Department of State on several bills which would amend the Magnuson Fishery Conservation and Management Act of 1976, including S. 747, a bill "to improve the administration and enforcement of the Magnuson Fishery Conservation and Management Act," S. 1245, a bill entitled the "Fishery Conservation and Management Act Amendments of 1985," and S. 1386, a bill "to promote the Americanization of domestic marine fishery resources." We understand that these bills, as well as other bills which have been introduced in the House, reflect the serious concern of Congress with the administration of the Magnuson Act and the effectiveness of U.S. fisheries policy. It is now over eight years since the United States extended its jurisdiction over fisheries to 200 miles, establishing our sovereign rights to explore, exploit, conserve and manage all fishery resources within the U.S. exclusive economic zone, except highly migratory species of tuna. In that time, Congress and the Administration have sought to fulfill the promise of the Magnuson Act—namely, full utilization of our fishery resources by the United States fishing industry. We have not yet realized the promise, but we have made significant strides. With your continued help, we will reach our common goal in the shortest possible time and thus provide the greatest overall benefit to the nation. We must not spare any effort or reject any initiative that may hasten this event.

I propose today to discuss the bills before you in the order in which they were introduced. I will review those provisions of the bills that directly involve the Department of State in the Americanization of our fisheries. In the interest of time, I will deal with certain provisions conceptually rather than discuss specifics.

As enacted in 1976, the Magnuson Act specifically excluded highly migratory species of tuna from the fishery resources over which the United States has sovereign rights to explore, exploit, conserve and manage. There was and there remains good reason to do so.

Unlike other species of fish, tuna migrate widely in the ocean. The same schools can be exploited at various times in the zones of many countries as well as in waters far beyond the jurisdiction of any nation. No single country can thus manage them effectively, for its management actions can easily be thwarted by inconsistent management in other zones and by fishing beyond 200 miles. For this reason, the United States has long held the view that tuna must be managed cooperatively by all countries with vessels that fish for tuna as well as those countries off whose coasts the stocks of tuna pass. We have put this view into practice through such

vehicles as the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC).

Moreover, we are engaged at the moment in negotiations with fifteen Pacific island States in an effort to conclude a regional tuna treaty providing access for U.S. fishermen to tuna resources in the western Pacific. We are making good progress in those talks, and hope that by early next year we can conclude an acceptable treaty. In the Latin American region, we have concluded the interim Eastern Pacific Ocean Tuna Fishery Agreement (EPOTFA) which we anticipate will enter into force in the near future. We also expect to begin negotiations soon for a follow-up comprehensive regional tuna agreement for the Eastern Pacific.

It is my view, Mr. Chairman, that we would not have made the progress that we have achieved to date in the South Pacific negotiations—and would not have concluded the EPOTFA—were it not for our existing law and policy concerning tuna. If we were to change our law regarding tuna jurisdiction, it is my judgment that we would be unlikely to see a successful conclusion to these efforts.

Our position with respect to highly migratory species of tuna goes beyond a mere non-assertion of jurisdiction over tuna in our zone. We firmly believe that unilateral domestic management of tuna by any nation is inconsistent with the need of the species for cooperative, multilateral action. For this reason, we do not recognize the jurisdiction over tuna variously claimed by certain nations.

The extension by the United States of jurisdiction over tuna out to 200 miles would consolidate similar measures by other nations, thus encouraging self-defeating unilateral efforts to control highly migratory stocks. Such a radical change in our law and policy would entail severe consequences for U.S. tuna fishermen in their worldwide operations.

At the same time, we are aware that some believe our tuna policy impedes domestic efforts to manage swordfish and other large pelagics, and that this belief has led to some frustration. In fact, however, the level of foreign tuna longlining in the U.S. EEZ has declined dramatically in recent years. This decline is the result of management measures in the existing Preliminary Fishery Management Plan for Atlantic Billfish and Sharks, voluntary reductions in effort by the Japan Tuna Association, and regulations on the harvest of bluefin tuna adopted by ICCAT. To illustrate this reduction in effort and the consequent decline in swordfish bycatch, I would point out that in 1984 foreign tuna longliners took an incidental catch of only 402 swordfish. This figure compares with an incidental catch of 8075 swordfish in 1980. A similar reduction has occurred in the bycatch of billfish. Moreover, foreign longline fishermen cannot retain their bycatch of other species; these fish must be cut from their lines while still in the water.

Unfortunately, the frustration of some seems to have lingered, even as the problem itself has diminished. We will continue our efforts to minimize this problem, while still providing foreign vessels a reasonable opportunity to fish for tuna in our EEZ. I believe this can be accomplished through the mechanisms already at our disposal.

We support the intent of S. 747 to create a more orderly scheduling process for foreign fishing in our zone and to facilitate the deployment of U.S. observers. We defer to the Department of Commerce on the specific measures to accomplish this that are contained in the bill.

With regard to Section 5(a) of the bill, we share the concern with the health and safety of U.S. observers placed aboard foreign fishing vessels that receive permits to operate in our zone. We note, however, that to deny a permit based on health or safety considerations, the Secretary of Commerce would need to develop health and safety standards for foreign fishing vessels operating in our zone.

We are currently working with staff of the House Merchant Marine and Fisheries Committee and of the Subcommittee on Fisheries, Wildlife Conservation and the Environment, as well as with the National Marine Fisheries Service and the Coast Guard to explore the issue of observer health and safety, and would welcome the opportunity to work with Senate staff as well.

With respect to S. 1245, let me briefly relate a number of recent developments that may bear on the problems the bill seeks to address. Mr. Chairman, as you know, we have sought in recent years to pursue Americanization of our fishery resources through increased coordination with, and reliance on, our fishing industry. In particular, we have encouraged our industry's efforts to negotiate agreements with foreign industry representatives to expand their purchases of U.S. fish and fishery products in exchange for allocations. This process has not been easy, but it has achieved some impressive results. For example, in 1985 we expect that our industry will sell 330,000 metric tons to Japan through joint ventures and over the

side sales. In addition, we are pleased that the Japanese industry has agreed to invest in shore-side processing facilities in Alaska.

Mr. Chairman, in quoting these figures, it is not my intention to give undue praise to Japan's performance, but rather to indicate that our relationship with Japan is benefitting the United States and its industry. Of course the development of the relationship has been gradual and has entailed enormous effort on the part of Congress, the Administration and the U.S. industry.

Moreover, we suspect that Japan harvests salmon beyond and within our EEZ. The Magnuson Act gives the United States domestic authority to conserve and manage salmon of U.S.-origin on the high seas as well as within the EEZ. As you are aware, these salmon are extremely important to many subsistence and commercial fishermen in western Alaska. Quite frankly, our discussions in the International North Pacific Fisheries Commission (INPFC) have not produced the results we desire. Consequently, we have recently initiated bilateral discussions with Japan to address this problem. In our first meeting each side presented its position, and my Japanese colleagues and I discussed informally how to proceed.

We have scheduled another round of bilateral discussions for August 19-22 in Seattle. We are working closely with the Alaska Department of Fish and Game, the Alaska delegation, the National Marine Fisheries Service and the industry to develop an effective U.S. position for the upcoming session.

In S. 1245, I believe that the distinguished Senator from Alaska, in representing those closest to these problems, means to send a clear signal to Japan. I hope that in my remarks today I can reinforce his message—we will not stand idly by while the Japanese reap where they do not sow.

Japan has received allocations this year of 729,937 metric tons (MT). Encouraged by the December 1984 industry-to-industry agreement, we indicated to the Japanese that they could expect their allocations for 1985 would reach approximately 900,000 tons by the end of the year. However, we have made it clear that we remain concerned about progress on certain important aspects of the agreement. The most important of these is the Japanese commitment on processed pollock products by the end of 1985. The Japanese industry thus has not finalized any contracts for purchases, but rather has pursued investments in two shoreside processing operations in Alaska. We intend to monitor closely all developments in this area.

While I have dwelled at some length on our fishery relationship with Japan, I would like to turn to problems with other countries. For some time now we have been disturbed by the incidental catch of salmon in Taiwan's unregulated high seas gillnet fishery for squid. These interceptions undermine the conservation regime, inadequate though it may be, that has been established by the INPFC.

Early this year, Taiwan was asked to adopt in its high seas gillnet fishery the same regulations used by Japan in its squid fishery. Taiwan took no action, but insisted on its own alternative which was unacceptable. In early June, staff representing Senator Stevens, Senator Murkowski, Congressman Young and Governor Sheffield met with Taiwanese representatives to repeat our concerns about Taiwan's gillnet fishery. Taiwan's representatives explained that their authorities would not agree to adopt the Japanese regulations, but agreed to examine alternatives.

Thereafter, the Alaska Department of Fish and Game and the National Marine Fisheries Service developed an alternative proposal, supported and presented by the Alaska Congressional delegation. When it appeared that Taiwan might not accept it, Senator Stevens met with Secretary Shultz on June 19.

As a result of this meeting, Counselor Ed Derwinski and others at the highest levels of the Department are working with the American Institute in Taiwan (AIT) to help solve this problem. I am happy to report that AIT, through the coordination Council for North American Affairs, has obtained the concurrence of the Taiwan authorities to implement the Alaska proposal. While certain details must still be resolved, and AIT must ensure that the agreed proposal is implemented, we believe that Taiwan's acceptance of the proposal is an important first step.

We also intend to monitor Korean fisheries beyond our zone in the event that our salmon are being taken in Korea's squid gillnet fishery. If current suspicions can be documented, we will pursue this issue.

Let me say that the initiative and support of Senators Stevens, Murkowski, and Gorton, of Congressmen Breaux and Young, of Governor Sheffield, and of their staffs have been indispensable to these efforts. With the kind of cooperation we have achieved between both branches, I believe there is little we cannot do.

Turning to the specific provisions of S. 1245, I note that the bill would authorize U.S. management over straddling stocks, that is, those stocks of fish located both within the EEZ and in areas adjacent to and beyond it, except when they are found in a foreign nation's territorial sea or fishing zone as recognized by the United

States. Thus far, U.S. fishery conservation and management efforts have largely centered on stocks located within the EEZ.

As Senator Stevens rightly noted in his statement introducing S. 1245, the problem of conserving and managing straddling stocks may become increasingly important in the years ahead as the U.S. fishing industry displaces foreign fleets within our zone. For this reason, it is appropriate that we begin considering how to deal effectively with this issue.

The rights of states of origin over anadromous species and of coastal states over sedentary species of the Continental Shelf are recognized under customary international law. The Magnuson Act provides for domestic authority of the exercise of U.S. jurisdiction over anadromous species and Continential Shelf fishery resources beyond our EEZ.

The rights of coastal states over other fishery resources beyond their exclusive economic zones are not well developed. The U.N. Law of the Sea Treaty provides in Article 63, for example, that coastal states and states fishing such stocks shall seek to agree on measures necessary for the conservation of straddling stocks.

Leaving aside this point, we are not aware that any nation is fishing at present outside our EEZ for stocks over which we now have jurisdiction only in our zone. As I mentioned previously, however, present inactivity should not deter us for considering how to deal with this eventuality. As we displace foreign pollock fisheries within our zone, for example, it is possible that foreign fisheries for straddling stocks will sprout up beyond it.

Should such fisheries materialize, a range of alternatives would seem to be available to us, from negotiations with those conducting these fisheries to ensure that they do not undermine our conservation efforts within the zone, to sanctions against those who may choose to ignore our conservation goals. We believe that the solution should fit the problem. For this reason, it would seem premature to select a single option from among our potential alternatives.

In addition, the option identified in S. 1245, if enacted now, could establish certain precedents that might adversely affect our fisheries and maritime interests in other areas of the world. Mr. Chairman, in the interest of time I will not detail them. Suffice it to say that we believe we must tread cautiously in this area.

We understand that the negotiations envisioned in the bill with respect to our recognition of foreign fishing zones are closely linked to the bill's approach to straddling stocks. I will say that in certain cases we would find it difficult to negotiate such provisions because of existing maritime boundary disputes. In addition, since fishing by adjacent states for straddling stocks may also pose a problem, we believe that such negotiations should potentially encompass nations in addition to those fishing within our zone pursuant to a governing international fishery agreement.

With respect to reciprocity in fishing, we believe that the Magnuson Act and our GIFAs currently establish such a policy. A standard article in each of our GIFAs provides that, should we indicate to a foreign government that nationals and vessels of the United States wish to engage in fishing in that nation's fishing zone, the foreign government will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with the GIFA.

Section 3 of the bill would also add new allocations criteria to those contained in the Magnuson Act. Specifically, these provisions would require that the Secretary of State, in cooperation with the Secretary of Commerce, take into account in making allocations the extent to which each foreign nation is cooperating with the United States in negotiations aimed at recognizing foreign fishing zones. It would also require that account be taken of whether and to what extent the foreign nation utilizes services offered by our industry in support of fishing activities in our zone.

Mr. Chairman, we have no objection to the addition of new allocations criteria. In particular, it may be desirable to consider the extent to which foreign nations use support services provided by the U.S. industry.

However, Section 3 of the bill would add these new criteria at the expense of existing Section 201(e)(1)(E)(viii), the so-called "basket clause." Deletion of this clause would remove the Secretary of State's discretion in determining directed foreign fishing allocations in U.S. waters.

We believe it is important that this provision be retained in order to ensure that the Administration has the flexibility it needs to factor appropriate foreign policy concerns into our fishing relations with other countries. We are aware of the concern within the fishing industry at considering factors unrelated to fisheries in determining foreign allocations in U.S. waters, but we believe that we have been judicious in our use of the "basket clause."

This provision has been used to deny or limit allocations in only three instances since 1977. We denied Soviet allocations in response to their invasion of Afghani-

stan; we denied Polish allocations after martial law was imposed in Poland; and we reduced Japanese allocations because of the whaling issue.

We believe that these past actions have not abused the "basket clause," in that we have invoked the clause only in extreme situations. Deletion of this clause would unquestionably undermine the Administration's ability to carry out a consistent foreign policy. We must have the authority to implement a foreign policy which can be responsive to the serious challenges facing our country.

We would also note, Mr. Chairman, that deletion of the "basket clause" would drastically limit the Administration's flexibility and could force the Administration to consider, if international conditions warrant, whether to abrogate GIFAs in lieu of taking action under this clause.

I mentioned earlier that our efforts to persuade Japan to deal meaningfully with the problem posed by its high seas interceptions of salmon in the International Pacific Salmon Fisheries Commission have been less than satisfactory. Believing that the prospect for further progress in that forum was dim, we initiated bilateral discussions. Mr. Chairman, I believe we should address this issue in any forum which may help us to achieve the results we seek. In this regard it may be necessary to continue our efforts outside the INPFC.

However, as Senator Stevens has correctly noted in the bill, there is a third party whose assistance we need to resolve the problem. That third party is Canada. We will soon be involved in follow-up negotiations to the recently concluded Pacific Salmon Treaty. These negotiations will address our common problems concerning salmon in the Yukon River. The salmon spawned in this river are intercepted by the Japanese high seas salmon fishery. Thus, we believe that the United States and Canada have a common interest in reducing Japan's interceptions. We have discussed the salmon interception problem with Japan, and of course will continue to do so.

Section 4 of the bill provides for expanded scientific cooperation with respect to North Pacific fishery stocks and for a review of multinational cooperative development plans for these stocks. We believe the objectives of this section are already being accomplished and that this provision is unnecessary. Further, we believe that the existing international political situation may pose difficulties in trying to bring together all Pacific nations that have significant interests in North Pacific fishery matters.

Section 8 of the bill would increase foreign fishing fees by 50 percent per year over the cost of carrying out the provisions of the Magnuson Act in the previous year. I submit that this provision would ensure a phase out of foreign fishing—perhaps even faster than the direct phase out proposals currently before the Committee. But such annual increases in foreign fishing fees will not necessarily hasten Americanization of our fisheries. When foreign fleets consider fishing possibilities in our EEZ, they evaluate three categories of costs: (1) the operational costs of sending fishing vessels to our zone and maintaining them here, (2) the costs incurred in purchasing fish over-the-side and shoreside from the U.S. industry in order to receive direct allocations, and (3) the fees they must pay for the fish and for the presence of U.S. observers aboard their vessels. A significant increase in any category of costs affects the other categories. For example, if fishing fees increase, operational costs or costs of purchasing fish over-the-side and shoreside must decrease in order to maintain profitability.

The Administration believes that determination of the level of foreign fees should be consistent with the fair value of the fish, the goals of the U.S. for development of each fishery, and foreign cooperation in meeting these goals. We favor a simple provision allowing more flexibility in setting fees unencumbered by arbitrary increases and/or legislative formulas.

Finally, Mr. Chairman, Section 10 of S. 1245 would enable the U.S. Trade Representative to reduce or eliminate fishery allocations provided under the Magnuson Act when an action of a foreign nation involves "an unjustifiable, unreasonable, or discriminating act, policy, or practice which burdens United States commerce in fish or fishery products." However, we believe that the Administration already has the authority to do this under existing law. Therefore, we must oppose this section of the bill.

In addition, we question the standard contained in Section 10. In the fisheries regime established by the Magnuson Act, there is a rather complex relationship between allocations on the one hand, and trade, joint ventures, economic cooperation, and investments on the other. In this regard, trade in fisheries products is quite different from other trade. Consequently, we believe that it may be difficult for the U.S. Trade Representative to determine when an action of a foreign nation involves an "unjustifiable, unreasonable, or discriminating act, policy or practice which bur-

dens United States commerce in fish or fishery products." The inclusion of this provision could restrict the U.S. Government's flexibility in negotiating with its fishing partners to the detriment of the U.S. industry.

With respect to S. 1386, a bill "to promote the Americanization of domestic marine fishery resources," I would like to make the following comments and observations.

The bill, as I understand it, reflects a genuine effort to ensure that the U.S. processing sector will benefit in the coming years, as the U.S. harvesting sector has benefitted in recent years from the decline in foreign fishing in our waters. It is also in the nature of a marketing bill in that it seeks to assure that our domestic processors are not eclipsed in our own market by foreign processors who obtain their supplies of raw product from joint venture operations.

S. 1386 would accomplish these goals by reducing direct foreign allocations under a formula and placing the savings in two separate accounts, one for U.S. harvesters supplying to foreign processors in joint ventures, and the other for U.S. harvesters supplying to domestic processors. Each year under the formula, direct foreign fishing in our zone would decline, and the joint venture/domestic processor accounts would increase.

As Senator Gorton noted in his statement introducing the bill, approaches to Americanization of our fisheries differ but the goal is shared by all. The critical question is, what policy will best achieve this goal?

We are concerned about the approach taken in the bill. We believe that it involves a number of significant risks. Rather than lead to a rapid phasing-in of Americanization, it could lead to unused resources sitting in reserve accounts that cannot be tapped by U.S. harvesters. Moreover, these reserves could not be tapped to promote purchases of processed fish from U.S. processors.

A study prepared in April 1985 for the Highliners Association by Natural Resources Consultants of Seattle makes a number of important observations with respect to Americanization of our fishery resources in the first half of this decade. The study points out that we have achieved:

1. Complete Americanization of the sablefish fishery in the Gulf of Alaska;

2. A harvest by U.S. trawlers and line vessels estimated to exceed one million metric tons during 1985 or about 44 percent of the optimum yield available in the northeast Pacific, with the United States likely to become the largest single harvester of groundfish in this region by the end of this year;

3. A value of harvests to joint ventures estimated to be about $95 million in 1985;

4. Production by U.S. factory trawlers and motherships valued in 1985 at about $40 million;

5. Shoreside processed value of groundfish, exclusive of halibut of about $38 million;

6. Ex-vessel value of combined west coast and Alaska groundfish landings including halibut anticipated to approach $221 million in 1985; and

7. Likely production by the North Pacific and Bering Sea groundfish fleets of more food fish from the EEZ than all other U.S. fisheries combined.

The study further points out that, while there has been criticism that U.S. processors have not benefited from the rapid Americanization by the harvesting sector, these figures suggest that at least 40 percent of what may be described as new fishing activity has come from processed fish and over 50 percent of the total value of U.S. caught groundfish from the region will be derived from fish delivered to U.S. processors. The study notes, however, that with the exception of the traditional handlers of halibut and sablefish, the processors involved are not from the historical processing sector but have largely emerged from the harvesting sector of the industry.

Mr. Chairman, I would not want to suggest that our traditional processing sector has benefited in recent years from Americanization of our fishery resources as have our traditional harvesters. On the other hand, I believe it fair to say that they have benefited. I also firmly believe that they will continue to benefit from the efforts of Congress, the Administration and the industry, under existing legislation, to achieve our common goal.

S. 1386 contemplates a legislated acceleration of the policy we have steadily implemented thus far. Such an acceleration inevitably involves significant risks. I realize that some believe these risks may be worth taking. Others may not be. Whatever emerges in our collective best judgment, I believe we must fully comprehend the risks involved.

The Highliner Study points out that the growth in joint ventures has largely been achieved through U.S. control over resource access. This conclusion undoubtedly is accurate. The study also suggests that this same control can be used to stimulate

growth in the processing sector. I am not so sure. I would note that the Study itself points out that "if any significant increase in U.S. prices resulted from phase-out, importers might turn to alternative groundfish resources or analog products, eliminating any opportunities for the Pacific Northwest and and Alaska processors to supply this market niche."

I believe that under existing law and policy the United States commands considerable leverage to increase sales of U.S. processed fishery products as a condition of granting access to the fishery resources in our zone.

To accelerate this policy, as I have mentioned, the bill would establish certain reserves. It is unclear to us, Mr. Chairman, how the establishment of a reserve amount that could only be tapped by U.S. fishermen delivering their fish to U.S. processors will necessarily stimulate growth in the processing sector. It is significant that the Highliner Study concludes with this observation:

"If no significant progress has been made in substituting U.S. for foreign processing by the end of the phase-out period (or at 50 or 75 percent of that period), the policy could be re-evaluated to permit joint ventures to absorb all or part of the unused reserves."

I submit that it may be very difficult to re-evaluate such a policy if and when it is implemented. The result, as I have mentioned, could be unused fishery resources sitting in a reserve that cannot be tapped by joint ventures and that cannot be used to encourage foreign nations to increase their purchases of shoreside processed product.

Mr. Chairman, we have several concerns with regard to the mechanics of S. 1386. We believe that it seeks to reduce foreign allocations from the total allowable level of foreign fishing (TALFF), rather than the TALFF itself, since the amounts by which foreign allocations are reduced would be used to establish the reserves mentioned. For this reason, we believe that part of existing Section 201(d) must be retained in order to provide a definition of TALFF, such as, for example, the definition currently contained in Section 201(d)(2) of the Magnuson Act.

Otherwise, only nations with allocations over 65,000 tons in 1985 would be able to receive any allocations in 1986 and later years. It is clear from Section 201(d)(1) that this not the bill's intent.

We understand that the allocations foreign nations might receive under bilateral international fishery agreements could be greater than the amounts they would otherwise receive pursuant to the reduction formula. We believe that the bill could clarify that these increased amounts would be set aside from the amounts that would otherwise be placed in the two reserve accounts.

Section 3(C) of the bill provides that under no circumstances may any foreign nation's portion of the TALFF exceed the amount described in paragraph (1)(D). In other words, after 1954, foreign nations would be limited to the lesser of 65,000 tons or the level of their 1985 allocations. We believe that this provision could unfairly penalize nations that, for various reasons, have no allocations or reduced allocations in 1985, even if those nations were more willing to enter agreements with benefits for the U.S. industry than those who would not be penalized.

The bill provides for the continual accumulation of unutilized reserves. We do not understand how these reserves could accumulate under our current fishery management plans which, for the most part, requires annual specifications of the optium yield, TALFF, domestic annual harvest, etc. Depending on the life cycles of the species of fish involved, accumulation of reserves could be impractical.

In the same context, Mr. Chairman, we believe that it would be difficult under our existing procedures to negotiate allocations that could extend over a period of as long as eight years. Again, these existing procedures, for the most part, require annual specifications of optimum yield, domestic annual harvest, and TALFF.

The bilateral agreements proposed in the bill could extend over the period from 1987 through 1994, whereas our existing GIFAs are normally limited to five years in duration. We believe it would be desirable for some time limit to be placed on the arrangements contemplated in the bill such that they would extend over no longer a period than a nation's GIFA, unless like the GIFA, they were renewed or renegotiated as mutually agreed.

A final note with respect to S. 1386, Mr. Chairman, involves Section 2 of the bill. This section would limit the discretion of the Secretary of State in taking into account important foreign policy issues when making allocations to foreign nations. Section 2 would restrict consideration of "other matters" to "other fishery matters." I believe that I have already stated our views with respect to the basket clause. We do not support either deleting this clause or restricting it as contemplated in Section 2 of S. 1386.

Before I close, Mr. Chairman, let me mention the most recent additions to S. 1245 regarding the phase-out of foreign fishing in the U.S. EEZ. These proposals were circulated only at the end of last week, and we have not had the opportunity to study them closely. I intend to do so as soon as possible and will submit written comments to the Committee.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions Members of the Committee may have, and to continue to work with you on these important bills.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Questions. What other nations, if any, have fishery resources off their coasts that could potentially replace the fish now caught by Japan in the United States' EEZ? To what extent, if at all, do you believe that Japan could gain access to such fish and, thereby, compensate for any loss of fish caught in the U.S. EEZ?

Answer. We would defer to the National Marine Fisheries Service on the precise data concerning Japanese world-wide fishing operations. However, we understand that Japan takes pollock and cod in Soviet waters, although this allocation has been reduced recently, as has Japan's allocation in U.S. waters. We expect Japan to seek alternate sources of fish, such as similar species of fish stocks off South America, but in our view, it is not likely these could directly compensate for losses in the U.S. EEZ.

Question. To what extent, if at all, do you believe that Japanese demand for pollock and pollock products could be temporarily or permanently reduced to frustrate United States' attempts to fill the market "void" created by the reduction or elimination of foreign fishing in the U.S. EEZ?

Answer. We would prefer that the Department of Commerce respond to this question on factors affecting the pollock market.

Question. Reports indicate that Japanese fishermen harvest pollock in the Soviet Union's waters. What does Japan pay the Soviet Union for these fishing privileges in the Soviet Union's waters? Do most nations charge foreign fishing fees which reflect the economic value of fishery resources caught within their EEZ?

Answer. Japan fishes for pollock in Soviet waters under a reciprocal fisheries agreement. It is our understanding that no fees are paid by either country. We would refer questions on other nations' foreign fishing fees to the National Marine Fisheries Service.

Question. To what extent, if at all, are the operations of foreign fleets fishing in the U.S. EEZ directly or indirectly subsidized by their flag state?

Answer. We would defer to the National Marine Fisheries Service on this question of foreign fleet subsidies.

Question. What steps have been taken (e.g. requests to observe fishing operations) to obtain reliable information on the extent of interceptions of North American-origin salmon by the high seas fishing fleets of Japan, Taiwan and the Republic of Korea?

Answer. The United States receives information on salmon interceptions from Japan through the International North Pacific Fisheries Commission. We understand that the National Marine Fisheries Service will be monitoring squid drift-net vessels of Taiwan and the Republic of Korea beginning this year to observe their take of fish other than squid.

Question. To what extent has Japan, Taiwan and the Republic of Korea provided access for U.S. government observers to their high seas fishing operations in response to such requests?

Answer. The United States places observers on Japanese vessels under the auspices of the International North Pacific Fisheries Convention. At this time, no U.S. observers are placed on Taiwanese of Korean vessels, unless they are operating within the U.S. exclusive economic zone.

Question. To what extent has the government of Japan taken enforcement actions against its flag vessels found fishing in violation of the conservation measures agreed to by the International North Pacific Fisheries Commission or Japanese regulations relating to gillnetting for squid?

The National Marine Fisheries Service has provided the Committee with information indicating that there is pollock, sablefish, Pacific cod, halibut, herring and Pacific Ocean perch in the international "doughnut" area of the Bering Sea. What is the extent of the fishery resources in this area?

Answer. We understand the National Marine Fisheries Service has provided answers to these questions.

Question. To what extent are foreign fleets fishing for groundfish in the "doughnut" are of the Bering Sea?

Answer. There is no requirement for foreign nations to report fishing efforts in this international area between the 200-mile zones of the United States and the Soviet Union. We understand that Japan, the Republic of Korea, Poland, and possibly other nations fish for pollock and turbot in this area.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. Don't most foreign-fishing fee assessments in 200-mile zones around the world actually reflect the value of the resource rather than the cost of administering the zone?

Answer. We defer to the Department of Commerce concerning the foreign fishing fee assessment practices of foreign nations in their exclusive economic zones.

Question. Has any progress been made in negotiating an agreement with Mexico to allow U.S. fishermen access to the underutilized shrimp resources of Mexico's 200-mile zone? How do you anticipate the imposition of a phaseout of foreign activity in the U.S. 200-mile zone will affect these negotiations?

Answer. The Department of State has attempted, over the past several years, to persuade the Mexican Government to discuss the question of access for U.S. shrimp fishermen. However, the Mexican Government has been unwilling to discuss the issue, contending that there is no available surplus of shrimp in Mexican water. The Department will continue to urge the Mexicans to consider an agreement but, since the possibility of success depends on the cooperation of the Mexicans, the prospect of an agreement is not great.

Since there is no GIFA in force between the U.S. and Mexico (and consequently no Mexican fishing in the U.S. EEZ), a phaseout of foreign fishing in the U.S. EEZ is not likely to directly affect the possibility of a shrimp agreement between the U.S. and Mexico. However, in general terms, any accelerated phaseout of foreign fishing in the U.S. EEZ will certainly complicate the efforts of the Department to secure access for U.S. distant water fishermen throughout the world.

Question. The following language has been proposed as an amendment to curtail U.S. Coast Guard involvement in enforcing the Mexican 200-mile zone. Please comment.

Section 301 of the Magnuson Fishery Conservation and Management Act is amended by adding after subsection (b) the following new subsection:

"(c) If the United States has no treaty in force to manage transboundary migratory stock throughout its range consistent with Subsection (a)(3), the provisions of paragraph (1), (2)(A) and (3)(A) of Subsection 3(a) of the Lacey Act amendments of 1981 shall not apply to the taking of such stock. For the purpose of this subsection, the term 'transboundary migratory stock' means the migratory species of penaeid shrimp in the Gulf of Mexico."

Answer. The Department of State has no objection to the proposed amendment but offers the following comments. The U.S. Coast Guard does not "enforce" the Mexican 200 nautical mile exclusive economic zone. The U.S. Coast Guard, along with the National Marine Fisheries Service of the Department of Commerce, does have domestic law enforcement responsibilities under the Lacey Act which would be affected by the proposed amendment. These agencies may have comments of their own on this aspect of the proposed amendment.

The Department of State believes that the adoption of this amendment would not alter the recognition by the United States of Mexican jurisdiction over shrimp within that country's exclusive economic zone. The Department of State supports the concept of international cooperation in the conservation and management of transboundary migratory stocks and suggests that the language of the proposed amendment be broadened so that it would apply to other stocks which can be shown to be transboundary migratory in nature. Such cooperation would not necessarily have to be embodied in a treaty, but could be incorporated into a governing international fishery agreement or other international agreements in appropriate cases.

Question. Article 63 of the Law of the Sea suggests that management of straddling stocks should involve an agreement between the U.S. and the countries harvesting the stock outside the U.S. 200-mile limits. Do you feel that such an international approach could provide effective management for straddling stocks?

Answer. Yes, such an international approach could provide effective management for straddling stocks as well as other benefits. A prime example of this approach in

North America is the Northwest Atlantic Fisheries Organization (NAFO), established by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. The NAFO Convention entered into force on January 1, 1979. It provides for multilateral scientific study of straddling stocks, for annual management measures for such stocks, and for joint international enforcement efforts.

It would also be possible to pursue the management of straddling stocks on a bilateral basis with each of the countries fishing for these stocks. Under either a multilateral or bilateral approach, the United States potentially could enlist foreign cooperation in data collection, scientific analysis, enforcement, etc. Such cooperation could be important in developing a management program and in assuring that the goals of the program are met.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. Does the State Department indeed foresee the U.S. Government funding development of fisheries of foreign states in the Central, Western, and South Pacific through this legislation without including our own Pacific Island fisheries which are so in need of basic development?

Answer. The Administration has proposed legislation which would direct the Secretary of State, after consultation with the Secretary of Commerce and other interested agencies and concerned governments, to submit to the Congress a proposed long term regional fisheries development program for the Central, Western and South Pacific Ocean. The Department of State believes that this legislation is crucial to the successful conclusion of negotiations currently underway to secure a regional tuna agreement in this area.

In proposing this legislation, it is not the intention of the Administration to exclude the State of Hawaii and the U.S. flag territories in the Pacific. Nor is it our intention to suggest that fisheries assistance for the foreign States be undertaken at the expense of U.S. states and territories or that S-K funds be utilized as a source of funding for assistance to foreign States. Nevertheless, the exact nature of fisheries development programs within the United States is outside the responsibility of the Department of State, and we would have to defer to the Departments of Commerce and the Interior and the Office of Management and Budget on this aspect of the question.

Senator GORTON. Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman.

As has been pointed out, we certainly have accomplished a lot since the act was passed. There are 23 fishery management plans and a number of preliminary management plans regarding foreign fishing in place, implementing the goals of the act. Some of the fisheries management plans have been successful in achieving resource stability and in rebuilding stocks. Some have not.

Foreign fishing off our shores, however, has declined from 1.7 million metric tons in 1977 to nearly 1.4 million metric tons in 1984, and U.S. landings including joint ventures have risen from 2.4 million metric tons to 3.7 million metric tons over the same period. Many new fisheries have been developed including butterfish on the east coast, for example, squid, sablefish, Pacific cod, pollock and the like—all creating new jobs for American fishermen. Despite these impressive figures, we estimate that the current fishery resources in the U.S. economic zone can support an annual harvest approximately twice the present yield.

The fact of the matter is, Mr. Chairman, that many fish stocks in the U.S. zone are not presently fully utilized by anyone. We are taking a look at some of the problems involved in a fairly comprehensive way, and would hope that the results of these studies, jointly being carried out by ourselves and the councils, will begin to identify the reasons for this.

We note—and Mr. Wolfe has spoken at some length about it—that S. 747 would eliminate the exemption for highly migratory

species, defined as tuna in the Magnuson Act. We support the position that State has taken, that only through effective management from an international standpoint will the management of resources that require conservation measures throughout the range of stocks be carried out.

S. 747 amends several provisons of the Magnuson Act to authorize a larger role for the councils in habitat matters. We have published a formal habitat policy, supporting habitat as a consideration in fisheries management planning. Conceptually, we have no problem with the amendments to the findings, purposes, and the FMP contents provisions. However, we are concerned that embodying our policy in statute could provide an additional pretext to litigate a council's decision. Legislating the regional planning process that we use internally, we believe is unnecessary. Requiring Federal agencies to respond formally to the views of two fish and wildlife agencies and eight fishery management councils is neither efficient nor effective in carrying out our water resource conservation effort. Perhaps some way can be found to overcome these potential procedural difficulties.

S. 747 also has vessel safety as a national standard consideration. We prefer to address vessel safety considerations as a required provision of a fishery management plan.

We believe that the public should receive a continuing return on its investment in fishery management and should have at its disposal other possible tools for management. We are proposing an amendment to ease the strict formula for setting foreign fishing fees. Currently fees must be set at least in an amount sufficient to recover a percentage of the total cost of carrying out the act as determined by the ratio of the foreign catch to total catch in waters subject to U.S. fishery jurisdiction. Thus, we must annually sort various activities of NOAA, the Coast Guard and the State Department by whether they are Magnuson Act-related or not. This sorting frequently involves judgments, as does the determination of the catch ratio.

The amendment we seek makes the determination of the level of foreign fishery fees a policy matter consistent with the fair value of the fish; the goals of the United States for developing each fishery; and foreign cooperation in meeting these goals. In addition, we are proposing that revenues from fees be divided between the National Oceanic and Atmospheric Administration and the Coast Guard to offset the costs of managing the fishery resources of our zone.

The 50-percent annual increase for foreign fishing fees mandated by section 8 of S. 1245 would have the effect of terminating foreign fishing in very short order. We are not opposed to the phasing out of foreign fishing. Indeed, our goal is full domestic utilization of fishery resources under our jurisdiction. We support the bill's intent that fees reflect the true value of the resources. The present fee system is not based on fair value and may in fact operate at cross-purposes with our fish and chips policy.

We favor a measured deliberate approach to foreign fishing phaseout, along the lines similar to the provisions of S. 1386, but on a fishery-by-fishery basis to assure that we do not mortgage the future for a short-term, reactive gain.

We propose amendments to authorize specifically certain functions to be served by fees—the use of differentiated fees for management purposes and for funding buy-back or other compensatory programs that may be instituted as part of a limited access program. These amendments are intended to highlight the availability of flexible and fair methods for adjusting effort within or between fisheries. Any buy-back program implemented to reduce capacity in a fishery would be financed by the fishermen themselves through additional fees. S. 747 authorizes dislocation compensation programs. While we consider our proposal more flexible, we support fee-financed programs to facilitate adjustments. Such programs could rely more on private sector mechanisms than on government administration. Therefore, we would oppose establishing programs operating on a revolving fund basis through the U.S. Treasury.

We propose two amendments to the State/Federal relations provisions of the act. The first is an amendment allowing the Secretary's decision to manage fisheries governed by the act within the borders of a State to have immediate effect. We do not seek to change the criteria for preemption. Under present law we cannot react to short-term needs, and therefore, we need a more effective way of dealing with that.

Secondly, we propose to allow a Governor, after consultations with the Secretary, to permit fish processing in internal waters only after the Governor determines that adequate domestic processing capacity does not exist in the region. We think this would be helpful.

The straddling stock provision of S. 1245 is an interesting concept. We are concerned that it might affect adversely U.S. fishermen who operate off the shores of other countries. We agree that it is a problem, and one that we must focus on.

The final section of 1245, section 10, gives the U.S. Trade Representative authority to reduce or eliminate fishery allocations upon finding that a foreign country has acted in a manner to burden U.S. commerce in fish or fishery products. We believe the administration already has the authority to do this under existing law, and this section is not necessary.

The last substantive provision of S. 747 prohibits the Secretary from raising a civil penalty above the amount first assessed by written notice of violation, with certain exceptions. Again, this provision, we believe, is unnecessary and unduly restrictive. We put into place, starting in January of 1985, a policy of reducing penalties deviating from that assessed in the written notice of violation unless the administrative law judge sufficiently justifies the increase.

Mr. Chairman, I have included a lot of comments in our testimony, but in the interests of time, I will conclude my remarks by pointing out that I think fisheries are at a crossroads, economically and socially, and that some of the problems dealing with the Magnuson Act must approach and take a hard look at those two factors in order to achieve the growth that we are all looking for.

Thank you very much.

[The statement follows:]

STATEMENT OF WILLIAM GORDON, ASSISTANT ADMINISTRATOR FOR FISHERIES, NOAA, DEPARTMENT OF COMMERCE

Mr. Chairman and members of the subcommittee, I am pleased to testify on behalf of the Department of Commerce on the reauthorization of the Magnuson Fishery Conservation and Management Act (the Act). The Magnuson Act has assisted the United States in its assertion of sovereign rights to explore and exploit the fishery resources within 200 miles off our coasts. The initial passage of the Magnuson Act was a bold step toward the control of rich, renewable fishery resources and should continue to govern their optimum use into the future.

We have accomplished a great deal since the Act was passed. Twenty-three fishery management plans (FMPs) are in place, implementing the goals of the Act. Foreign fishing off our shores has declined from 1.7 million metric tons (MMT) in 1977 to nearly 1.4 MMT in 1984. U.S. landings, including joint ventures, rose from 2.36 MMT to 2.74 MMT over the same period. Despite these impressive figures, we estimate that current fishery resources in the U.S. Exclusive Economic Zone (EEZ) can support an annual harvest approximately twice the present yield.

NOAA is undertaking a comprehensive study of the manner in which fishery management in the United States is conducted. This study will assess the effectiveness of the current system of Federal fishery management and recommend organizational, regulatory and legislative changes where needed. The study will look at the accomplishments of the Magnuson Act and alternatives for managing different types of fisheries under different institutional arrangements. The purpose of the study is to finds ways of reducing costs and regulatory burdens while improving the management of fishery resources. To coordinate with the completion of the study, we have submitted a bill to the Congress that proposes to reauthorize the Act for two years with technical amendments to increase options and flexibility in the system. I would like to take this opportunity to describe our proposals and to give our preliminary views on the bills introduced by Senators Danforth (S. 958), Gorton S. 1386), Lautenberg (S. 747), and Stevens (S. 1245).

Both S. 958 and S. 1245 authorize appropriations for the next two fiscal years—an authorization period consistent with our proposal. S. 747 provides a five-year reauthorization. We favor a two-year reauthorization which places a deadline for joint Executive. Legislative and private-sector action to improve U.S. fishery management as well as develop a strategy for full domestic utilization. The Administration bill would authorize appropriations of $49,110,000 for fiscal year 1986 and such sums as may be necessary for fiscal year 1987. We believe the levels authorized by S. 1245, S. 958 and S. 747 are significantly greater than those actually needed to prepare and implement sound fishery management regimes in view of current budget constraints.

S. 747 eliminates the exemption of highly migratory species (defined as tunas) in the Magnuson Act. This is contrary to long-standing U.S. policy and we oppose it. The current exemption is based on the fact that tunas migrate far beyond the waters of any coastal state. Effective management of the resource requires that conservation measures be applied throughout the entire range of the stocks. The U.S. is continuing to pursue, where possible and appropriate, international regimes to conserve and manage these resources. In addition, the present policy is an essential factor in our current efforts to secure regional access arrangements for U.S. tuna vessels. With respect to the amendment contained in Section 2 of S. 1386, limiting the Secretary of State's discretion in applying the allocation criteria to fishery matters, and the "basket clause" modification proposed in S. 1245, we defer to the Department of State.

S. 747 amends serveral provisions of the Magnuson Act to authorize a larger role for the Councils in habitat matters. We have published a formal habitat policy supporting habitat as a consideration in fishery management planning. Conceptually, we have no problem with the amendments to the findings, purposes, and FMP contents provisions. However, we are concerned that embodying our policy in statute could provide an additional pretext to litigate a Council's decision. Legislating the regional action planning process now being used in NMFS is unnecessary. Further, requiring Federal agencies to respond formally to the views of two fish and wildlife agencies and eight Fishery Management Councils is neither efficient nor effective.

We are proposing an amendment which would, among other things, clarify the Secretary's authority to deny a permit to a foreign vessel in connection with the commission of a prohibited act, and would clarify that denial is required for failure to pay fines or penalties. Further, we propose to add to the list of conditions and restrictions included in each foreign fishing vessel permit the requirement that such vessels comply with health and safety conditions so that a permit could be denied to

a foreign vessel whose facilities are found to be so inadequate or unsafe that the health or safety of an observer would be jeopardized. S. 747 addresses the latter issue differently, but is consistent with our intent. We would favor either approach. However, S. 747 contains amendments regarding health and safety, specifying and excessively burdensome checkin/checkout procedure. Any procedure to facilitate stationing of observers can be done by regulation. We would prefer that such detailed procedures not be legislated.

S. 747 also adds vessel safety as a consideration in the national standards. We prefer to address vessel safety considerations as required provisions of a fishery management plan.

We believe that the public should receive a continuing return on its investment in fishery management and should have at its disposal other possible tools for management. We are proposing an amendment to ease the current law's strict formula for setting foreign fishing fees. Currently, fees must be set at least in an amount sufficient to recover a percentage of the total cost of carrying out the Act as determined by the ratio of the foreign catch to the total catch in waters subject to U.S. fishery jurisdiction. Thus, we must annually sort various activities of NOAA, the Coast Guard and the State Department by whether they are Magnuson Act-related or not. This sorting frequently involves judgments, as does the determination of the catch ratio. For example, do we include internal waters or freshwater catches in the total; do we use the shellfish weight including shell (as international statistics do); or, just the meat weight? Once we have a dollar total to be recovered, we must: estimate the species mix of the prospective foreign catch; assess the relative value of each species; and, assess whether the poundage fees reflect these values and are sufficient to recover the foreigners share of the total cost. This is a complex, time consuming, and controversial process.

The amendment we seek makes the determination of the level of foreign fees a policy matter consistent with the fair value of the fish; the goals of the United States for development of each fishery; and, foreign cooperation in meeting these goals. In addition, we are proposing that revenues from fees be divided between the National Oceanic and Atmospheric Administration and the U.S. Coast Guard to offset the costs of managing the fishery resources of the EEZ.

The 50 percent annual increase in foreign fees mandated by section 8 of S. 1245 would have the effect of terminating foreign fishing in very short order. We are not opposed to phasing out foreign fishing—indeed, our goal is full domestic utilization of fishery resources under our jurisdiction. We support the bill's intent that fees reflect the true value of the resource. The present fee system is not based on fair value and may in fact operate at cross-purposes with the fish and chips policy.

We favor a measured, deliberate approach to foreign fishing phaseout, along the lines similar to the provisions of S. 1386, but on a fishery-by-fishery basis to assure we don't mortgage the future for a short-term, reactive gain. We believe S. 1386, however, contains some technical problems and are concerned that adverse precedents not be set for our distant water fisheries.

The Administration, the Congress, the Councils and industry should, for the next two years, work together to devise an overall domestic fisheries strategy that considers related factors such as trade, joint ventures, enforcement, and fishery research cooperation. As a step in this direction, we propose making the determination of the level of foreign fees more flexible so the fair value of foreign access to U.S. fishery resources may be recovered, unencumbered by arbitrary increases and/or legislated formulas.

We are proposing amendments to adjust member terms in those instances where a Council thinks the appointment cycle is unbalanced. We would also require each Council member to file a personal statement of financial interest in the fishing industry. We support changing the criterion for Council membership to "knowledgeable and experienced" as contained in S. 747, but oppose reserving any appointments for particular segments of the industry or other interest groups. Recent appointments reflect a sincere effort to respond to Congressional concern about the balance of interests on certain Councils.

We propose removing foreign data concerning directed fishing and fish received at sea from the confidentiality provisions of the Act. Access by the Councils to a country's fishing data and "joint venture" catch data should be authorized. The present confidentiality restrictions might deprive the Councils of information needed for a variety of management decisions. While the catch by a single "joint venture" arrangement would be available, confidentiality will still apply to statistics submitted by domestic vessels involved in the venture. We do not endorse Council-member access to confidential data. Current practice is to allow Council staff access on a need-to-know basis. This practice makes section 8 of S. 747 unnecessary. Requiring

dual submission of data would increase costs and confidentiality could be compromised. Allowing meetings to be closed to discuss confidential statistics might actually increase the appearance of conflict of interest in Council deliberations.

We propose amendments to authorize specifically certain functions to be served by fees—the use of differentiated fees for management purposes and for funding buy-back or other compensatory programs that may be instituted as part of a limited access program. These amendments are intended to highlight the availability of flexible and fair methods for adjusting effort within or between fisheries. Any buyback program implemented to reduce capacity in a fishery would be financed by the fishermen themselves through additional fees. S. 747 authorizes dislocation compensation programs. While we consider our proposal more flexible, we support fee-financed programs to facilitate adjustments. Such programs could rely more on private sector mechanisms than on government administration. Therefore, we oppose establishing programs operating on a revolving fund basis through the U.S. Treasury.

We propose two amendments to the state/Federal relations provisions of the Act. The first is an amendment allowing the Secretary's decision to manage fisheries governed by the Act within the borders of a state ("Federal preemption") to have immediate effect. We do not seek to change the criteria for preemption. Under present law we cannot react to short-term needs. Even when a state agrees to an expedited hearing on a notice of preemption, it takes three weeks to preempt state regulations that are inconsistent with an adopted Council plan. The state still would have the opportunity for a hearing as well as an incentive to organize one expeditiously. Immediate preemption would give due weight to the determination of the Secretary that action or inaction by the state adversely affects the implementation of a fishery management plan.

Second, we propose to allow a Governor (after consultation with the Secretary) to permit fish processing in internal waters only after the Governor determines that adequate domestic processing capacity does not exist in the region. This is meant to discourage contravention of the objectives of a fishery management plan which might result from parochial state considerations. We do not object to the amendment proposed in S. 1245 to section 306(c) of the Magnuson Act giving the Governor of Alaska authority to permit certain foreign operations within the boundaries of the state, provided the Governor uses this authority after consulting the Secretary and the North Pacific Council. This amendment is limited to Alaska and addresses problems of under development in many remote areas of the State. Consultation with the North Pacific Council in this instance would substitute for the regional assessment of capacity desired by the Administration.

The jurisdiction assigned by the Act to the states and the Federal Government should not be changed unless there are conflicts in state/Federal management. Authority over enclaves of Federal jurisdiction was ceded to states for this reason in the 1983 Magnuson Act amendments. We agree that the amendment contained in section 5(a)(2)(A) of S. 1245 recognizes such a conflict. However, in the case of Cook Inlet, the subject of section 5(a)(2)(C), I know of no significant state/Federal fishery management conflicts. We are reluctant to address this amendment until we know the problem it is designed to solve.

The "straddling stock" provision of S. 1245 is an interesting concept. We are concerned that it might affect adversely U.S. fishermen who operate off the shores of other countries. The United States has major fisheries for tuna in many parts of the world as well as groundfish and longline fisheries in the Northwest Atlantic which could be affected be expanded jurisdictional claims of other countries. We defer to the Department of State with respect to the implications of managing straddling stocks.

While we support the new allocation criterion contained in S. 1245 concerning use of U.S. support services, comparable requirements could be adopted by other countries and the result would be substantially increased costs for existing or potential U.S. distant-water fisheries. The associated amendments in S. 1245 which are designed to build reciprocity into GIFAs and mandate negotiations to eliminate high seas interception of salmon of U.S. origin are unnecessary. GIFAs already contain language on reciprocity and the Department of State has already initiated such negotiations. We fully support those negotitations. If Congress wishes reciprocity to be a factor in the allocations process, we recommend that it be added to the criteria rather than substituted for the existing criterion.

We believe the objectives of section 4 of S. 1245 already are being accomplished. NMFS has cosponsored two recent multinational symposia on North Pacific fishery matters, one on King crab and one on sablefish. A third worldwide symposium on cod was held in Seattle last month. These symposia have involved Councils, the

States and academia. Because the "cooperative development plans" referred to in section 4(a)(1)(B) of S. 1245 are not defined, I assume the term refers to the industry-to-industry discussions regarding the optimum yield and allocation determination processes. I believe the U.S. industry should determine the participation in these deliberations. In both of these cases, scientific symposia and cooperative development plans, giving this responsibility to the International North Pacific Fisheries Commission would duplicate the existing responsibilities of the Councils and the Development Foundations. Since this section is unnecessary, we oppose the bill's provision to hire a professional administrator for these activities.

Section 6 of S. 1245 eliminates references in the Magnuson Act anticipating a law of the sea treaty. We believe these amendments go beyond the President's intention in not signing the Law of the Sea Convention. The Administration bill revises section 2(c)(5) of the Magnuson Act to eliminate its anachronistic features, but retains section 401 to provide administrative flexibility to adapt regulations if the United States finds a revised treaty acceptable. We defer to the Department of State on the foreign policy implications of the proposed amendment.

We object to the proposal in S. 1245 to include a separate breakout in the President's budget of prior year money given to each Regional Council by cooperative agreement. Any changes in the total Council funding in the budget year already appears under the line item for fishery management programs. The distribution of increases or decreases among the Councils should change in response to priorities among fisheries. The current budget structure makes this sort of flexibility possible. The level of detail anticipated by this provision would set an undesirable precedent. The information sought by this provision is available to Congress in the exercise of its oversight responsibilities.

The final section of S. 1245 (section 10), gives the U.S. Trade Representative authority to reduce or eliminate fishery allocations upon finding that a foreign country has acted in a manner to burden U.S. commerce in fish or fishery products. We believe the Administration already has the authority to do this under existing law. Therefore, we oppose this section of the bill

The last substantive provision of S. 747 prohibits the Secretary from raising a civil penalty above the amount first assessed by written notice of violation, with certain exceptions. This provision is unnecessary and unduly restrictive. In January 1985, NOAA Deputy Administrator Calio announced a policy of reducing penalties deviating from that assessed in the written notice of violation unless the Administrative Law Judge sufficiently justifies the increase.

Mr. Chairman, this concludes my prepared remarks and I am ready to answer any questions the Committee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

Question. What have been the total world landings of (Alaska) pollock each year since 1977 and what percentage of the total was taken from the United States' EEZ during each of those years?

Answer. In 1983, the total world catch of Alaska pollock amounted to 5.0 million metric tons (t). This total was about 20 percent larger than in 1977, but most of the increase occurred during the 1981-1983 period.

The catch in the U.S. EEZ has increased annually since 1977 (except in 1979) and amounted to almost 1.5 million tons in 1984. During 1977-83, the percentage of Alaska pollock caught in the U.S. EEZ remained stable and amounted to about one-fourth of the world catch (table 1). U.S. fisherman have greatly increased their harvests in recent years as a result of expanded joint venture agreements with various foreign nations.

TABLE 1.—WORLD. ALASKA POLLOCK CATCH, BY QUANTITY, 1977-84

Year	Total catch	1,000 metric tons catch in U.S. EEZ			Percentage of total [1]
		Foreign	Domestic	Total	
1977	4,295.9	1,009.8	0.3	1,010.1	23.5
1978	3,925.3	1,074.0	1.8	1,075.8	27.4
1979	3,944.0	1,044.8	3.1	1,047.9	26.6
1980	4,020.8	1,119.1	1.4	1,120.5	27.9

TABLE 1.—WORLD. ALASKA POLLOCK CATCH, BY QUANTITY, 1977–84—Continued

Year	Total catch	1,000 metric tons catch in U.S. EEZ			Percentage of total [1]
		Foreign	Domestic	Total	
1981	4,176.8	1,117.3	60.7	1,178.0	28.2
1982	4,478.2	1,051.9	130.4	1,182.3	26.4
1983	5,047.3	972.8	284.5	1,257.3	24.9
1984	N.A.	1,033.2	455.1	1,488.3	N.A.

[1] The catch of foreign and U.S. fishermen inside the U.S. EEZ as a percentage of the world catch.
N.A. Not available.

Sources: FAO Yearbook of Fishery Statistics—Catches and Landings, various years; NMFS Fisheries of the United States, various years.

Question. What is your estimate of the Japanese yearly demand for pollock and pollock products? What percentage of that demand is filled by pollock caught in the United States' EEZ?

Answer. Japan's Alaska pollock harvests occur mainly in the Japanese 200-mile EEZ, in Soviet waters, and the U.S. EEZ off Alaska. With reduced allocations in Soviet waters and more recently in the U.S. EEZ, Japan's pollock production has declined from a peak of about 3 million tons a year to the current 1.6 million tons. With pollock imports of 0.9 million tons, Japan's total current supplies are about 2.5 million tons, still below the levels of the peak years. Since Japan's directed harvests in the U.S. EEZ were 724,000 tons in 1984, this represents 29 percent of total supply.

Question. By how much, if at all, do you estimate that Japanese surimi production would be allowed if allocations for directed catch of pollock from the United States EEZ were eliminated and joint venture operations with U.S. harvesters were limited to 900,000 metric per year?

Answer. This question is difficult to answer precisely. The question assumes the elimination of over 700,000 tons of pollock in directed fisheries in the U.S. EEZ, but increases in Japan's purchases of pollock through joint venture arrangements from the present 450,000 tons to a ceiling of 900,000 tons. Thus, the decrease in pollock TALFF of more than 700,000 tons is offset by a substantial increase in supplies from joint ventures, and the net loss to Japan is actually about 250,000 tons of pollock supplies.

The impact of this loss of pollock supplies on Japan's surimi production can only be surmised. It is unlikely that Japan could gain access to additional supplies of pollock from other sources since there are resource constraints in Japan's EEZ and the Soviets are also reducing Japan's pollock allocations. The Japanese could, however, use more sardines, mackerel, and other species to produce surimi. Because Japan's annual production of surimi, although declining over the long term, is still about 300,000 to 350,000 tons a year, a loss of 250,000 tons of raw pollock supplies would result in reduced surimi production of only about 15 to 20 percent.

Question. (A) What other nations, if any, have fishery resources off their coasts that could potentially replace the fish now caught by Japan in the United States' EEZ?

(B) To what extent, if at all, do you believe that Japan could gain access to such fish and, thereby, compensate for any loss of fish caught in the U.S. EEZ?

Answer. (A) In 1984, the Japanese caught approximately 941,000 metric tons (t) of fish in the United States' EEZ. Of this total, 938,000 t (or 99.8 percent) came from waters off Alaska. Approximately 84 percent of the Alaskan catch consisted of only two species: Alaska pollock (77 percent) and Pacific cod (7 percent). Flounder species accounted for 14 percent of the catch and the remainder (2 percent) consisted of other species. On a species replacement basis, the Soviet Union is the only other nation holding sizable stocks of Alaska pollock and Pacific cod. Demersal fish stocks off the coasts of Chile and Argentina might be utilized by the Japanese on a substitution basis, i.e., demersal species so similar to Alaska pollock and Pacific cod that consumers would be willing to buy them instead of these two species. It is unlikely that the flounders now caught in the U.S. EEZ could either be replaced or substituted.

(B) It is highly unlikely, given recent trends, that Japan could compensate for the loss of fish caught in the U.S. EEZ by increasing its catch within other countries' 200-mile zones. Japan's 1985 allocation of Alaska pollock in the Soviet 200-mile zone totaled 250,000 t, or only about one-third of the projected 1985 U.S. pollock allocation. The Soviets have reduced Japan's Alaska pollock allocation by 40,000 t over the past two years (table 1). The allocations of flounders and Pacific cod have been

reduced by 20 percent and 12 percent respectively from 1984 to 1985. Japan is faced with further reductions of its Soviet allocations as the U.S.S.R. continues with the "Sovietization" of fishery resources within its 200-mile zone.

At the present time, there are no directed Japanese fisheries for the demersal fish stocks found off the coasts of Chile and Argentina. The Chileans and Japanese have engaged in joint ventures, but Chile has begun to restrict these in recent years. It is also unlikely that Japan will be granted a directed fishery for Argentina's demersal fish stocks in the near future because of the recent decline in Argentina's own fisheries catch.

TABLE 1.—JAPAN CATCH ALLOCATIONS IN THE SOVIET 200-MILE ZONE, 1983–85

Species	Metric tons			Percentage change [1]
	1983	1984	1985	
Alaska pollock	290,000	270,000	250,000	−7.4
Flounders	26,000	24,800	19,800	−20.2
Pacific cod	34,200	32,300	28,500	−11.8
Wachna cod	16,200	15,100	12,900	−14.6
Saury	68,600	63,900	63,900	[0
Atka mackerel	12,700	11,800	5,400	−54.2
Sand lance	40,400	37,600	30,600	−18.6
Sharks	1,200	1,200	1,200	[0
Tuna	6,400	6,400	6,400	[0
Rockfish	17,900	16,700	14,200	−15.0
Squid	147,900	137,700	117,400	−14.7
Octopus	5,200	5,200	2,500	−51.9
Tanner crab	2,800	2,800	2,400	−14.3
Red Tanner crab	2,600	2,400	NA	
Korean hair crab	800	500	NA	
Spiny crab	800	800	NA	
Shrimp	500	500	NA	
Snails	3,500	3,500	NA	
Other	71,700	66,800	47,200	−29.3
Total	750,000	700,000	600,000	−14.3

[1] Change from 1984 to 1985 expressed as a percentage of 1984 allocations.
NA—Not available

Source: National Marine Fisheries Service, Foreign Fishery Information Release No. 85-5, Mar. 21, 1985. (The original Japanese source was not given.)

Question. Do you expect that foreseeable technical developments in the production of surimi will allow Japan to utilize fishery resources other than pollock for making surimi?

Answer. A variety of fresh surimi is made from more than 60 different species, including tuna, mackerel, croaker and shark. Each species requires slightly different processing techniques. This surimi is not currently intended for frozen storage and is immediately processed to other products. Alaska pollock is the only species which is processed in commercial volumes for the production of frozen surimi. However, with existing new technology, it is likely that Japan will extend its surimi processing to other species. In fact, readily available supplies of sardines off Japan are being used for test batches of surimi in Japan. The U.S. menhaden industry is also considering the feasibility of applying surimi processing technology in the use of menhaden for human food.

Question. Can surimi be produced from pollock frozen in the round and shipped to Japan for processing?

Answer. Surimi is an intermediate processed seafood product used in the formulation/fabrication of a variety of finished seafood products. Surimi is minced fish meat which has been washed to remove fat and undesirable matter (such as blood, pigments and odorous substances), and mixed with cryoprotectants (such as sugar and/or sorbitol) for a good frozen shelflife. It is normally treated in 10 kg frozen blocks which are individually wrapped in waxed cardboard boxes. Thus, surimi has a long shelflife if frozen. Technically pollock could be frozen at −50 degrees F in the round and shipped to Japan for processing, however, economically it may be cost prohibitive. Moreover, pollock frozen in the round aboard vessels would produce inferior quality surimi.

Question. To what extent, if at all, do you believe that Japanese demand for pollock and pollock products could be temporarily or permanently reduced to frustrate United States' attempts to fill the market "void" created by the reduction or elimination of foreign fishing in the U.S. EEZ?

Answer. Reduction of availability of pollock through harvesting would tend to cause an initial price increase which in turn should reduce the quantity demanded. Therefore, economic factors could lead to the type of "frustration" you describe. A political decision to reduce consumption seems unlikely. To redress the supply shortage, Japan could try to buy more from its joint venture with the Soviet Union, and to increase the pace of efforts to develop substitute sources and products. The impact on Japan's demand for pollock from the United States is therefore difficult to predict.

Question. Do you believe that the price of raw surimi would rise significantly if foreign fishing in the U.S. EEZ were eliminated? If so, how would this likely affect market demand for surimi products in Japan?

Answer. A reduction in supply of any commodity would tend to increase prices. However, this tendency would be offset by increased U.S. production. The effects on demand are difficult to predict, but should be considered as several distinct segments: (1) "raw" surimi and intermediate products, e.g., surimi block; (2) end products, such as crab sticks; (3) Japan; and (4) the U.S. and the rest of the world.

An increase in raw material costs would probably reduce demand, or limit its growth, because fewer new end-processors (converters) would enter the business. It would stimulate technological research to use other species (e.g., oily fish such as sardines and menhaden) or source materials (e.g., vegetable proteins). Finally, converters would shift their product mix to end-products with higher profit margins, and thus better ability to absorb a raw material price increase. For example, one might see more analog crableg and scallops, and less of the traditional fried kamaboko products.

In the end-products markets, demand would respond to these changes in product availability and pricing structure. An interesting unknown is whether Japanese industry would prefer to maintain its traditional (but decreasing) markets in Japan for kamaboko-type products at the expense of foregoing further market penetration in the U.S.

Question. A significant portion of the breaded fillets sold in the United States are produced from frozen pollock blocks produced by other countries. What effect do you believe the reduction or elimination of foreign fishing in the U.S. EEZ will have on world pollock block prices?

Answer. A reduction or elimination of foreign fishing in the U.S. EEZ would tend to increase the price of pollock blocks initially, but this would encourage users to shift to higher quality fish from other species. In the U.S., pollock accounts for about 22 percent of total block use, the major reason being its low price in the world market.

Question. A recent GAO report indicates that the fees assessed to foreign fishermen under section 204(b)(10) of the Magnuson Act may not be recovering the full cost of carrying out the provisions of the Act with respect to foreign fishing fleets. Are we recovering the full cost of the Act with regard to foreign fishing fleets?

Answer. The GAO has found that certain improvements could be made to recover additional NMFS and Coast Guard costs. NMFS has elected to adopt these improvements which will add $52 million to total FY 1985 Magnuson Act costs to manage both foreign and domestic fisheries. Calculations of the achievement of cost recovery determined by the Magnuson Act formula show that since 1981, NOAA has collected $6.4 million over the amounts required by the Magnuson Act.

Question. What is your estimate of the average value, per metric ton, of each species of fish caught by foreigners in the U.S. EEZ?

Answer. The average values are difficult to establish because the species caught in the FCZ are sold on different markets and in different product forms. However, NOAA does adopt ex vessel values in the fee schedule based on analysis of wholesale market prices, consideration of the prices which are paid in joint venture, or other relevant information. For purposes of the 1986 fee schedule, NOAA has derived an average ex vessel value of $138.21/mt which under certain assumptions about value added would translate into an average wholesale landed price at a foreign port of $995.12/mt for frozen blocks. The accompanying table provides our estimates, at this time, of exvessel value by species. Final estimates will be published later.

	Fishery (ies)	Proposed 1986 exvessel value
Alaska pollock	All Alaska	$122/mt
Pacific cod	do	286
Pacific Ocean perch	do	399
Other rockfish	do	462
Atka mackerel	do	184
Flatfish	do	156
Pacific squid	do	224
Sablefish	GOA	730
	BSA	384
Other species	All Alaska	151
Snails	BSA	256
Pacific whiting	WOC	122
Sablefish	WOC	576
Pacific Ocean perch	WOC	549
Other rockfish	WOC	589
Flatfish	WOC	607
Jack mackerel	WOC	510
Other species	WOC	582
Squid Illex	NWA	390
Squid Loligo	NWA	633
River herring	NWA	139
Butterfish	NWA	618
Atlantic mackerel	NWA	190
Red hake	NWA	369
Silver hake	NWA	393
Other finfish	NWA	268
Atlantic sharks	Atlantic	423
Coral	Western Pacific	50/kg
Groundfish seamount	do	397
Dolphin fish	do	5,515
Wahoo	do	2,206
Pacific sharks	do	123
Striped marlin	do	3,752
Pacific billfish	do	1,503
Pacific swordfish	do	2,337

Question. Reports indicate that Japanese fishermen harvest pollock in the Soviet Union's waters. (A) What does Japan pay the Soviet Union for these fishing privileges in the Soviet Union's waters?

(B) Do most nations charge foreign fishing fees which reflect the economic value of fishery resources caught within their EEZ?

Answer. (A) Japan receives an Alaska pollock allocation in the Soviet 200-mile zone as the result of an annual mutually beneficial bilateral fishery allocation agreement between the two governments. No fishing fee payments are required under the terms of the agreement.

(B) In some countries, foreign fishing operations are subject to the same general requirements and licensing systems as national fishing operations. Pakistan, Iraq, Kenya, and Sudan have followed this policy. In most cases, however, distinctions are made between national and foreign operations.

In establishing fees, coastal nations have utilized several options: (1) royalty fees based on the weight or value of the catch, (2) fees based on the capacity of the vessel, or (3) lump sum payments.

Fees and licensing procedures vary widely from country to country, but generally reflect the desire to reduce foreign fishing or at least profit from it. Although it is not easy to make generalizations, certain regional tendencies are discernible. In the Western Pacific, lump sum payments have been traditionally favored because coastal nations have little control over the fishing activities of foreign fleets. As a general rule-of-thumb, five (5) percent of the landed price of the catch is assessed for fishing fees. A tendency to calculate the fees on a vessel-capacity/trip basis has emerged in recent years to boost economic returns and placate foreign fishing vessel owners objecting to lump sum fees.

West African and Indian Ocean countries have traditionally charged fees based on gross tonnages of foreign fishing vessels, but there has been a recent tendency

toward royalty payments based on a percentage of the landed value or weight of the catch.

Latin America has favored fees based on vessel capacity per trip. Generally this is expressed in net register tonnage (the actually capacity of the fish holds, rather than the entire vessel). Fishing fee systems in Latin America are described in appendix A.[1]

The Canadians levy fees based on the size of the vessel and the time spent on the fishing grounds. The European Community does not charge fishing fees, principally because it does not allow fishing by non-member countries.

It is often difficult to compare or calculate precise levels of fees and other payments because they are assessed in so many different forms. Development aid, construction projects, training, and joint venture development are examples of these. A number of countries, including Canada, the United States, Australia, and New Zealand, link foreign fishing access to trade concessions such as market access for fishery products.

The above information is a few years old and may be out of date in some cases.

Question. To what extent, if at all, are the operations of foreign fleets fishing in the U.S. EEZ directly or indirectly subsidized by their flag states?

Answer. About 7 percent of the foreign catch in the U.S. EEZ is harvested by countries with centrally planned economies. The other countries fishing in the U.S. EEZ are believed to subsidize their fishing industries directly or indirectly, but the extent of subsidies to the operations of their fleets fishing in the U.S. EEZ is not known. Naturally, foreign governments do not make accurate information on subsidies available, because of the potential use of such information to justify countervailing duties.

Question. To what extent, if at all, would foreign fishing fees have to be increased in order to overcome any unfair competitive advantage enjoyed by foreign fishing fleets because of subsidies, weak environmental protection and safety measures, or other factors?

Answer. Since we lack information on the extent of subsidization of foreign fishing operations we cannot project how U.S. fee schedules should be changed to make U.S. fisheries more competitive. NOAA has supported fee systems which would reveal the fair market value of the fish and, by implication, the level of subsidization provided by different countries to their fishing operations.

Question. What steps have been taken (e.g., requests to observe fishing operations) to obtain reliable information on the extent of interceptions of North American-origin salmon by the high seas fishing fleets of Japan, Taiwan, and the Republic of Korea?

Answer. Through the International North Pacific Fisheries Commission (INPFC), the United States has requested and received data on Japanese driftnet operations, particularly those of the squid fleet, in the North Pacific. The Japanese have also begun supplying statistical information on by-catch in the squid driftnet fisheries. In 1985, the National Marine Fisheries Service (NMFS) deployed observers aboard United States Coast Guard cutters to monitor the squid driftnet vessels of Japan, Taiwan, and South Korea to determine the extent of their operations and their catch of species other than squid. Also, in support of the recently ratified Pacific Salmon Treaty with Canada, NMFS has requested funds to conduct additional research on the impact of foreign high seas squid fisheries on Pacific salmon.

Question. To what extent has Japan, Taiwan and the Republic of Korea provided access for U.S. government observers to their high seas fishing operations in response to such requests?

Answer. To date, only one observer has been deployed aboard in the Japanese high seas squid driftnet fishery. The National Marine Fisheries Service has not made any other official requests of Japan, Korea or Taiwan to accommodate U.S. observers aboard their squid driftnet vessels. The United States has placed observers aboard the Japanese salmon mothership fleet since 1978.

Question. To what extent has the Government of Japan taken enforcement actions against its flag vessels found fishing in violation of the conservation measures agreed by the INPFC or Japanese regulations relating to gillnetting for squid?

Answer. Regarding the salmon fleet, Japan has reported annually to the INPFC on violations of the Convention by Japanese vessels and the penalties imposed thereon. From 1980 to 1983, the Japanese have reported between 3 and 11 violations of the Convention per year, with penalties of between 60 to 90 days suspension of fishing privileges for those vessels found fishing in prohibited areas.

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[1] The appendix is in the Committee files.

Question. The National Marine Fisheries Service has provided the Committee with information indicating that there is pollock, sablefish, Pacific cod, halibut, herring and Pacific Ocean perch in the international "doughnut" area of the Bering Sea. What is the extent of the fishery resources in that area?

Answer. The information previously provided is in error. The area in question is primarily deep water containing an estimated one million metric tons of pollock. There are about four thousand metric tons on Greenland turbot along the shallower north rim of the "doughnut".

Question. To what extent are foreign fleets fishing for groundfish in this "doughnut" area of the Bering Sea?

Answer. At present there are no accurate data available on the extent to which foreign fleets are harvesting groundfish in this area. There have been undocumented reports that up to 200,000 metric tons of groundfish are harvested in the "doughnut" by vessels from Japan, South Korea, Poland, and possibly other nations. The target species are pollock in the southern portion of the doughnut and Greenland turbot in the northeast portion. We doubt, however, that the actual harvest of these species is as much as 200,000 tons. Unfortunately, information on these fisheries is lacking because observations in the doughnut occur only incidentally to other observation programs in the U.S. fishery conservation zone. Although accurate data on the species composition of the catch and the catch rate in the region has been obtained, statistics on the total number of vessels operating in the doughnut area are not available because foreign nations are not required to report catch statistics or to provide for observer sampling.

Question. Can the billfish management plan be amended to protect domestic fishermen from gear and other conflicts with Japanese tuna longline vessels in the Atlantic Ocean? If so, what efforts to make these changes are underway?

Answer. The Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks makes provision for four area closures whereby foreign longlining with an incidental catch of billfishes and sharks would be prohibited. One such closure off the Mid-Atlantic and New England coast has been implemented. The Mid-Atlantic Fishery Management Council recommended that this closure be extended in time and the area increased; however, the evidence of gear damage or other adverse effects was insufficient to warrant further restrictions at this time. An amendment is being prepared that would provide a means to implement and modify area closures promptly based on evidence of adverse effects (e.g., gear damage) on U.S. fishing operations.

Questions of Senator Hollings and the Answers

Questions. You have estimated that the yield from U.S. fishery resources could be almost doubled and yet many U.S. fisheries are overfished and overcapitalized with fishermen continuing to compete for diminishing harvests.

(A) Where is this potential for increasing U.S. harvest?

(B) Within the context of FCMA, what can be done to redirect fishing effort onto underutilized resources?

(C) How is such an evaluation incorporated into the Administration's development of "flexible and fair methods for adjusting effort within or between fisheries"?

Answer. (A) U.S. fishery yields can be increased significantly if we use what we know scientifically about the management of stocks. This is particularly true of those stocks which have been severely depleted by overharvest, e.g. redfish and yellow-tail flounder. In general, heavily fished stocks can be expected to rebound significantly by utilizing wise management practices to allow stocks to replenish naturally. For example, the potential yield from haddock on Georges Bank under optimum management is five times greater than the expected yield this year. More immediate increases in yield can be obtained by concentrating excess fishing effort on latent resources which currently are under- or unutilized, e.g., Alaskan pollock and cod; Alaskan groundfish; capelin and herring in the Bering Sea; Atlantic mackerel; Pacific whiting, shortbelly rockfish; bonito; coastal mackerels; and squid. Domestic displacement of foreign catch will also significantly increase our yields. For example, the potential resources available for U.S. development is represented by a 1.9 million metric ton harvest taken by foreign vessels off Alaska in 1982.

(B) The FCMA provides the authority to rebuild stocks of fish that have been depleted by domestic or foreign fishing through a program of sound management in order to maintain them for future use. Fishermen and processors may use these restored and conserved resources as opportunities to redirect their activities as private sector initiatives. For example, investment in freezer vessels to improve the product

quality and value of presently underutilized species. The FCMA does not authorize regulatory activities that would specifically redirect U.S. industry efforts into any fishery resources.

(C) The proposed use of fees could assist fishermen to make a transition from one gear type or fishery, where excess effort is causing conservation problems and necessary regulatory restrictions result in reduced economic returns to another gear type or fishery that is underutilized. Such fishermen-financed program (e.g., buy-back) could allow fishermen locked into specialized gear or vessels to recover value from the restricted gear or vessels and, if they choose, reestablish themselves in a productive fishery.

Question. In addressing the issue of foreign fishing phaseout, your testimony warns against mortgaging the future "for a short-term, reactive gain." What future adverse effects do you anticipate from implementation of a date-certain foreign fishing phaseout?

Answer. We wish to caution against taking an action which is merely popular and not part of a strategy to obtain the greatest overall benefit for the Nation. In recent years, there has been a linkage between direct fishing allocations and joint ventures. The U.S. industry has not been able to capture any significant new foreign markets for U.S. caught fish. An abrupt termination of foreign fishing might result in a reduction and possibly near termination of joint ventures, particularly in the waters off Alaska.

It may be necessary, in our view, to continue some level of foreign fishing to allow U.S. harvesters and U.S. processors to enter into integrated ventures with foreign industries that have access to the markets. We are uncertain that a date-certain approach, as opposed to a phase-down approach or some other option, will yield the greatest overall benefit.

Question. In the event that such a scheduled phaseout is implemented, what changes could American consumers expect in the price, quality, and availability of seafood?

Answer. The phase out would have relatively little impact on U.S. consumers since most U.S. imports are different products and come from countries which have no or only a minor share of fishing in the U.S. EEZ. The major exceptions would be pollock-based sticks and portions and imitation products, which would experience some price increases. However, if U.S. processing of these products occurs the loss could be more than offset.

Question. What is your reaction to Senator Stevens' suggestion that the Councils develop foreign phaseout goals for each of the fisheries they manage, reporting to Congress after a three-year period concerning the fisheries for which no phaseout goal has been set?

Answer. We support the Councils developing goals for each fishery involving foreign fishing that would increase U.S. utilization and reduce foreign involvement. Because each fishery and its markets are different, there is no universal way to Americanize the fishery resources in our EEZ. If the Councils will indicate in the FMPs what the fishery development goals are, including U.S. processing and phase out of foreign fishing, then the NMFS can carry out programs and adopt policies based on those goals.

Question. Don't most foreign-fishing fee assessments in 200-mile zones around the world actually reflect the value of the resource rather than the cost of administering the zones?

Answer. There is little useful information on fee assessments of other nations. One reason is that most nations charge fees for tuna whereas the United States does not. It appears that most countries base fees on values of the resources, or values of the fishing opportunities, or some combination, rather than the country's cost of administering a fishing zone. Most fees appear to result from bilateral negotiations and consider commitments by the fishing country to economic objectives of the country which controls the resource.

Question. NMFS proposes to change its foreign fee determination process from a system to recover costs of administering the FCMA program to a system based on several criteria, including fish value and foreign cooperation. How would such a change affect the total revenues obtained from foreign fishing?

Answer. The NMFS proposal is to divorce the fee assessments from the recovery of costs and allow greater flexibility in assessing fees. This change would allow consideration of the value of the fish, or foreign cooperation or other factors when assessing fees. It would also allow NMFS to select the most appropriate fee option to achieve objectives. For example, an auction system could be used if the objective is to collect the value of the fish. There would be no guaranteed return on the costs of

administering foreign fishing, but an appropriately tailored auction should return the maximum revenues for the species being harvested.

Question. NMFS present habitat policy was introduced in 1983.

(A) Based on your preliminary experience, can you generalize on the significance of habitat considerations in effective management of marine stocks?

(B) For what portion of fishery management plans is adequate information on habitat available?

(C) How have these requirements been reflected in NMFS research allocations?"

Answer. (A) Habitat considerations are basic to effective management of all fishery stocks, including marine stocks. Without a healthy fish habitat you cannot have healthy fish stocks. Habitat is the basis for fishery productivity. It is the plant and equipment that is used to produce the goods. A large part of what we commonly refer to as fishery management (i.e., the rules and regulations governing harvest and the prevention of overfishing) could more properly be called "fisheries harvest management." In that same frame of reference we could more properly call habitat conservation "fishery productivity management."

It is sometimes difficult to look at an individual action or activity and relate its effect to the oceans and marine fisheries habitat. Most people do not realize that the majority of the important recreational and commercial fisheries are closely linked to the land masses. Anadromous species must return to rivers and streams to spawn. Other species depend on the estuaries and the shore zone for either spawning or nursery areas, or both. Still other species not directly dependent on estuaries for spawning or nursery areas rely on estuarine dependent species for their food supply. Many of the individual projects that go forward do not independently have a significant impact on marine habitat, but taken together they often have significant cumulative effects. Healthy quality habitat is critical to the management of marine species. If we continue to lose it or degrade it, fishery management will ultimately consist of simply dividing up fewer fish among fewer fishermen.

(B) Information on habitat and habitat requirements is currently available for virtually all of the fishery management plans, although only about 20% currently incorporate that information.

Adequate information on the effects of many kinds of activities and threats to the habitat is also readily available, and could be incorporated into the plans without the need of significant new research efforts.

Information on the actual habitat requirements of the various species, the amount and quality of specific habitat types needed to sustain specific fisheries, and the extent to which specific habitat losses or modifications will affect specific fisheries is sorely inadequate.

It is expected that when the Councils begin to evaluate their FMPs for habitat content, those data gaps will be identified, ranked in order of priority, and appropriate research recommendations will be made in the plans.

(C) Data requirements, arising from implementaion of NMFS' Habitat Conservation Policy, with regard to fishery management plans, have not yet resulted in changes in research program directions. The basic reason is that habitat information, to be used by the Fishery Management Councils to develop or amend FMPs initially should be requested by the Councils. With the exception of the Gulf Council, they have been slow to adopt the habitat-related opportunties and provisions recommended in the Habitat Policy. However, although slow to adopt such a significant policy change, there is general movement toward this position by the Councils. In response to certain Council needs, NMFS is currently developing plans for habitat research, to provide, in large measure, the information referred to in the Senator's question.

Question. (A) Has any progress been made in negotiating an agreement with Mexico to allow U.S. fishermen access to the underutilized shrimp resources of Mexicos 200-mile zone?

(B) How do you anticipate the imposition of a phaseout of foreign activity in the U.S. 200-mile zone will affect these negotiations?

Answer. (A) The U.S. access to shrimp resources in Mexican waters ended December 31, 1979, with the expiration of provisions related to this issue in the U.S.-Mexico Bilateral Fisheries Agreement which was later terminated on December 29, 1981, by Mexico. The U.S. efforts, prior to the agreement's termination, to extend U.S. access to the shrimp fishery were unsuccessful.

Current Mexican law and policy favor the development of Mexican shrimp cooperatives over private Mexican shrimpers. This policy reached a peak in 1981 when the Mexican Government agreed to finance the purchase by the cooperatives of all private shrimp trawlers and most private processing plants. As a result, even private Mexican citizens can no longer operate shrimp vessels. The Mexican Govern-

ment has indicated it would be politically untenable for it to allow foreign fishermen to take shrimp while private Mexican citizens are unable to harvest the resource. In addition, Mexico indicated through diplomatic channels on July 23, 1985, its continuing position that the total permissible catch of shrimp within its zone in the Gulf of Mexico would be taken by Mexican vessels.

(B) The NMFS, however, is continuing its efforts to improve the U.S.-Mexico fisheries relationship and is seeking to expand channels of communication between U.S. and Mexican fishing industry representatives, with a view to fostering mutually beneficial relationships.

Question. The following language has been proposed as an amendment to curtail U.S. Coast Guard involvement in enforcing the Mexican 200-mile zone. Please comment.

Section 301 of the Magnuson Fishery Conservation and Management Act is amended by adding after subsection (b) the following new subsection:

"(c) If the United States has no treaty in force to manage transboundary migratory stock throughout its range consistent with Subsection (a)(3), the provisions of paragraph (1), (2)(A) and (3)(A) of Subsection 3(a) of the Lacey Act amendments of 1981 shall not apply to the taking of such stock. For the purpose of this subsection, the term 'transboundary migratory stock' means the migratory species of penaeid shrimp in the Gulf of Mexico."

Answer. NMFS is opposed to any amendment that would abate its authority to apply the Lacey Act to any species of fish, whether such amendment is to the Lacey Act, or the Magnuson Act. The proposed amendment would do more than curtail U.S. Coast Guard involvement in fishing in the Mexican 200-mile zone. It would eliminate application of the Lacey Act to imports of penaeid shrimp in the Gulf of Mexico and would undermine United States efforts to support foreign countries in their efforts to manage shrimp populations.

This amendment would also seriously jeopardize our ability to enforce the six-week Texas closure under the Gulf of Mexico Shrimp Fishery Management Plan. Without jurisdiction over Gulf shrimp under the Lacey Act because of an amendment to section 301 of the Magnuson Act, large catches of shrimp taken illegally in the U.S. FCZ off Texas would be accompanied by claims that the shrimp landed were not taken in U.S. waters, but from Mexican waters. Such claims are extremely difficult to disprove, and therefore create a large loophole for would-be violators and extreme problems for NMFS and Coast Guard enforcement officials.

Additionally, the amendment seems designed to promote negotiation of a treaty to manage a transboundary migratory stock, defined as only penaeid shrimp in the Gulf of Mexico, throughout its range. While a treaty allowing U.S. fishermen access to shrimp resources in Mexico might be desirable, nothing in our past practice or in international law mandates such a treaty. In a case now before the Federal District Court for the Southern District of Texas, *Brownsville-Port Isabel Shrimp Producers Association* v. *Calio*, Civ. No. B-85-99, the United States has taken the position that Mexico's regulation of its shrimp resource is consistent with international law as embodied in the Convention on the Law of the Sea, and that Mexico's approach to shrimp management is similar to the approach used by our country to manage shrimp and many other species of fish within our FCZ. That position has been upheld by a U.S. District court. Thus, I see no reasonable basis for treating shrimp differently from other species subject to the Lacey or Magnuson Acts.

Question. I understand that NMFS is currently examining possible modifications to the current East Coast billfish management plan which could reduce conflicts between domestic fishermen and foreign tuna fishermen in the North Atlantic. What is the status of that evaluation?

Answer. NMFS monitors the level of foreign tuna fishing and conflicts between foreign longliners and U.S. fishermen. During the period 1983-84, both foreign tuna fishing and related conflicts were minimal. However, should foreign tuna fishing increase in the future, NMFS must be ready to take timely action to prevent adverse effects on U.S. fishing operations. NMFS is preparing an amendment to the Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks that would provide a means to implement and modify areas closed to the foreign incidental catching of billfishes and sharks promptly based on evidence of adverse effects on U.S. fishing operations.

Question. Testimony indicated that the length of foreign longlines is one cause of gear conflicts with domestic fishermen. What is the usual length of foreign longlines set off the east coast of the U.S.? What are the longest in use?

Answer. The usual (average) length of Japanese tuna longlines fished off the east coast is 55 miles. The longest known to be in use is about 70 miles in length.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. There has been some talk lately, both in Congress and at NOAA, of reducing the number of Regional Fisheries Councils by consolidating their jurisdictions. I have grave concerns regarding this proposal, especially regarding the effect on the Western Pacific of having its Council merged into the California Council. I do not feel an entity 3,000 miles from the fishery it is supposed to manage, and with only minimal representation and focus on that region could effectively serve its constituency. I was very pleased when NOAA withdrew its intention to consolidate the Councils this year, citing the many problems this would create. Does NOAA remain committed to maintaining a separate Western Regional Fisheries Management Council in Honolulu?

Answer. The Acting Administrator has established a joint Council/NOAA task force to evaluate the present institutional arrangements mandated by the Act. Included in this study will be an analysis of the present Councils in terms of their number, location, and composition. That study is scheduled to be completed in early 1986. Until then we intend to make no recommendation on consolidating or restructuring the existing Councils. NOAA intends to consult closely with the Congress before taking any actions implementing the Task Force report.

Question. As you know, this Committee reported out in May a fisheries reauthorization bill that includes the Central, Western, and South Pacific Fisheries Development Act; an act that is of great importance to Pacific Island fisheries. Just last Thursday, the House Merchant Marine and Fisheries Committee included a version of this Act as an amendment to the Compact of Free Association. This version of the Act, however, authorizes the Secretary of Commerce to develop a long term plan for fisheries development of all Island fisheries in the Central, Western, and South Pacific, *not* just the U.S. flag territories and Hawaii as in the Senate bill. This legislation was drawn up at the request of the State Department to aid them in their tuna treaty negotiations with the South Pacific Island nations; a carrot with which to extract favorable arrangements for the U.S. tuna industry.

While I am certainly behind the State Department's efforts to secure a favorable tuna treaty, I must express my concerns over the intended use of the House version of the Act. This Act has always been intended as a tool to promote and develop U.S. Pacific Island fisheries, which are far behind other U.S. fisheries in basic development. To use this Act to fund foreign fishery development without including our own deserving fisheries, as I feel the State Department has in mind, would be contrary to the purpose of the Act and would set a poor precedent for this nation's fisheries.

Based on your knowledge of this nation's fishery policy, could you foresee the Commerce Department coming out with a fisheries development plan for the Pacific that did not include our own island fisheries?

Answer. The Amendment to H.J. Res. 187 (Compact of Free Association) as accepted by the House directs the Secretary of State, in consultation with the Secretary of Commerce and other interested agencies and concerned governments, to submit to Congress a proposed long term program for regional fisheries development assistance to the Central, Western, and South Pacific region at the time a regional licensing agreement for U.S. tuna vessels is presented to the Senate for advice and consent. This provision is intended to address the major concerns of the Pacific Island Governments with which the United States is currently engaged in tuna fisheries negotiations.

Question. What measures currently exist to monitor and evaluate the impact of tuna fishing, both domestic and international, on tuna stocks and tuna by-catch such as billfish in the Western Pacific?

Answer. Present measures are inadequate to monitor and evaluate the impact of tuna fishing on tuna stocks and tuna by-catch in the Western Pacific. Detailed catch and effort data from the U.S. purse seine fleet operating in the Western Pacific are not available; vessels are not legally required to provide these data to the U.S. Government. Other tuna data from commercial and recreational fisheries of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands are incomplete, especially data on the recreational catch from Hawaii. There are no legal requirements for submission of these recreational data nor does the NMFS collect these data.

Foreign tuna fishing data are not available from fishing within the U.S. exclusive economic zone (EEZ) or from the EEZ's of other Island nations in the Pacific. A proper assessment of the tuna resources and the by-catch species will require specific data such as catch, effort and size composition from various tuna fisheries operat-

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ing in the region, and, for some species like albacore tuna, data from outside the region.

Question. (A) If we do have adequate information on this subject, what indeed is the impact?

(B) If we do not, what steps can be taken to attain this information?

(C) What type of monitoring system or data exchange would be useful in this regard?

Answer. (A) We do not have adequate information, and the impact of inadequate information is the inability to understand and appropriately manage the tuna stocks.

(B) A broad based treaty type organization will be required to effectively monitor and assess the tuna resources of the Central and Western Pacific. Voluntary or bilateral agreements would be inadequate since the data would have incomplete geographical coverage.

(C) In addition to tuna assessment efforts, research efforts need to be directed to interactions of fisheries in small geographic areas, such as the impact of tuna fisheries on local artisanal fisheries and the impact of intensive fishing for small tunas near fish aggregating devices.

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS

Question. Are Japanese longliners on the East Coast having any adverse effect on U.S. fishing operations?

Answer. Japanese tuna longliners fishing in the fishery conservation zone off the east coast are monitored by 100 percent U.S. observer coverage. During 1983–84, there were a total of 13 reported incidents most of which involved entanglement and release of U.S. and foreign longlines. One U.S. longline was severed, retired, and released. One U.S. fixed gear fisherman received $40,000 compensation from NMFS for gear damage attributed to a Japanese longliner. Overall, adverse impact on U.S. fishing operations was minimal.

Question. What do you intend to do about this problem?

Answer. The situation does not require immediate action because of the low level of Japanese fishing operations and the current restrictions that reduce conflicts and minimize incidental catches by foreign longline gear. The problem is being ready to take timely action should the level of foreign tuna fishing increase and create significant adverse effects. NMFS is preparing an amendment to the Preliminary Fishery Management Plan for Atlantic Billfishes and Sharks that would provide a means to implement and modify area closures during which foreign longlining with an incidental catch of billfishes and sharks would be prohibited. A key provision would be the means to take prompt action based on evidence of adverse effects on U.S. fishing operations.

Question. Your testimony also says that federal agencies should not have to respond formally to the views of NMFS and the eight fishery management councils.

(A) How many councils will usually be involved in a federal agency action; one or eight?

(B) Why is it inefficient and ineffective to have federal agencies respond formally to the councils?

(C) Do Federal Agencies now formally respond to all NMFS concerns?

(D) What effect will Council plans have if federal agencies need not respond to Council concerns?"

Answer. (A) Normally only one or two Councils would be involved in a Federal agency action. However, depending on the type of action, all eight Councils could be involved. The area and the species affected would be the determining factor. If the action was a regulation or a policy having national significance and affecting the Councils or the fisheries they manage, it could involve all eight Councils. If the action affected a species group like the Atlantic billfish, it would involve all five Councils on the east coast. If the issue were relatively local, i.e. a dredging permit, it might involve only one or two Councils.

(B) The Councils and the Federal action agencies are now free to address and respond to each other formally when necessary or desirable. Many Federal agency actions are highly complex and elicit a large number of responses. In such instances the agencies can aggregate similar concerns and respond to them generically in the Federal Register or in the Final Environmental Impact Statements. Furthermore, management objectives may differ between Councils, causing the comments of the Councils to differ, and even to conflict in some instances. Formal responses to specif-

ic entities, such as the Councils, would be an additional and unnecessary burden. Where warranted, the Federal agency can, and generally does, respond formally.

(C) No. As stated previously, many of our concerns are expressed in response to notices in the Federal Register and to Environmental Impact Statements and are aggregated with similar concerns expressed by others. In other instances our formally expressed concerns do receive a formal response, even if it is only an acknowledgement. In rare instances we receive no response at all.

Under its Habitat Conservation Policy, NMFS strives for early, informal involvement with the Federal action agencies. We have found that informal involvement in the early planning stages has been much more effective in the speedy resolution of issues that might be unresolvable at a later, more formal stage, when plans and positions have become firm.

(D) A Fishery Management Plan, containing the necessary information on the habitat requirements of the species, and expressing the Council's goals and concerns, would be an extremely valuable tool for the action agency planners. The action agencies are anxious to remove obstacles to their plans as early and as easily as possible. Since the FMPs would be available to them at the outset of the planning process they would be used to avoid difficulties that they might not otherwise recognize. If the FMP's are good, they will be used, regardless of whether or not the specific concerns of the Councils were responded to formally. Our experience has shown that early, informal involvement with the action agencies is much more effective in achieving our habitat goals than formal interactions after action plans have become firm enough to publish.

Senator STEVENS. Thank you very much. I have been sort of going through my memory as to the approach when we first started the hearings on this 200-mile limit in the early 1970's, and I must say no one has mentioned the Law of the Sea and how we are going to interpret that.

You both have indicated we are in agreement with the goals. We are just haggling about either time or price, so this one is not going to be so bad after all, if you really look at it that way.

I have just a few questions. I think that we have been working together, and we have got a lot of people to testify here today. I do question your position with regard to straddling stocks.

Mr. Wolfe, it does seem to me that when stocks are in the 3-mile limit and also in the 197-mile limit, we do not hesitate to take jurisdiction over them in toto, do we?

Mr. WOLFE. Within the 3-mile limit.

Senator Stevens: I mean if they are under State jurisdiction and the combination Federal/State jurisdiction and the regional Councils, the regional Councils dominate.

Now, if they are also slipping out 5, 6, 10, 15 miles beyond the 200-mile limit, why should we hesitate at all to take jurisdiction over those stocks if they predominate in the 197 miles, because there are foreign interests beyond the 200-mile limit?

Mr. WOLFE. I could not agree with you more, Senator Stevens. I think we, the Government, possibly need to be more enlightened on this. I am personally not aware of stocks within our zone over which we do not have jurisdiction. We already have jurisdiction over salmon that straddle and go beyond 200 miles and, consistent with international law, the coastal State also has jurisdiction over Continental Shelf fishery resources, such as lobster and scallops, beyond our EEZ.

If there are other straddling stocks and if we do have a serious problem, certainly we will want to take appropriate action.

Senator STEVENS. My staff tells me we are talking about, in our area alone—I do not know about the east coast—but Pacific Ocean perch, Alaska pollock, sablefish, Pacific cod, Pacific halibut, arrow-

tooth flounder, yellowfin sole, rock sole, flathead sole, Pacific herring, king crab, and snow crab.

Now, that does not seem to be an insufficient number to have as a vital interest in the subject of straddling stock. I would urge you to take a look at that. There is no use belaboring it. I think that we ought to be able to work it out. But one of the things that keeps ringing in the back of my mind is that there comes a time when some people—and I am not saying you—but some people in the State Department have other issues involved with some of these foreign governments, and unless we have set up the rules very plainly, there seem to be tradeoffs with our negotiating partners, and the first thing traded off is fish.

The foreign fish take in the North Pacific is almost 2 billion pounds per year, and we are crowing over the fact that we are taking some, almost half a billion pounds this year. We have got a long way to go in terms of Americanization of the fishery resources within the 200-mile limit. I do not think we should lose sight of the problems as we do.

I also want to just make a statement, rather than ask a question, just from my point of view. The two surimi plants are not a tradeoff for the commitments that are necessary from the Japanese on pollock. Their industry has not lived up to any of the agreements they have entered into with our industry. I think that is your statement; is that not correct?

Mr. WOLFE. I would like, for the record, to make sure everyone understands my statement. I have reiterated that statement not only to the industry and to the Hill, but to the Japanese Government.

Senator STEVENS. Well, many of us welcomed—and I think the State Department welcomed, the concept that we would have industry-to-industry negotiations in the hopes that we could have a sort of a peaceful transition through the economic process. But if our people are living up to their side of the bargain—American industry is and, to my knowledge, they have been—then the Japanese industry has not lived up to any of the bargains. When is our Government going to take over and do more than just talk?

Mr. WOLFE. With all due respect, Senator Stevens, I think the Japanese have lived up to a major part of the 1984 industry-to-industry agreement. There are some provisions that, in our opinion, have not been fulfilled, and we will continue to monitor their performance not only within the agreement, but their general performance all the way around during the course of the year. As you know, there are still allocations available for year-end 1985.

Senator STEVENS. Let me turn to Mr Gordon. I see my yellow light is on.

Bill, I am a little worried about your pitch on foreign fishing fees. If you are using this magic formula that relates to the foreign take versus the U.S. take, as I understand it, the joint ventures come under our side of the ledger. How are we going to ever get the fees to the point where they are really reflecting not only the cost of the administration of this act for the purpose of handling the foreign GIFA's and all the other activities related to the GIFA's, but also some reasonable value of the resources being depleted?

Mr. GORDON. Well, we have given a lot of thought to the fee structure. And, as you know through following the formula in the present law, our fees have gone up in some incremental amount each year. We have fine tuned the cost to get a more accurate handle on that, as we have changed our internal bookkeeping systems.

Senator STEVENS. But you do not take into account enforcement costs, do you?

Mr. GORDON. Yes.

Senator STEVENS. In the fees? Did you take into account the cost of sending Coast Guard vessels out to observe the Taiwanese violations on the high seas?

Mr. GORDON. Yes, sir.

Senator STEVENS. Will those be reflected in the Taiwanese fees this next year?

Mr. GORDON. They will be reflected in the total cost of carrying out the Management Act and each country will share some burden of that.

Senator STEVENS. But why shouldn't it be Taiwan? I would be willing to support your concept, the administration's concept of some flexibility in assessing fees, but it seems to me that if Taiwan violates the act, that means the Japanese and the Poles and everyone else pay a slightly increased fee because Taiwan keeps on violating the act.

You can answer that, I think, despite that red bell.

Mr. GORDON. Within the U.S. zone, everyone has shared equally in it. To follow the concept you are proposing, I really do not object to it. If we are called offshore beyond our zone for an enforcement endeavor, then perhaps that is an appropriate cost to bill directly to that country. Whether we build it into their fees or as a surchage is something that I think we want to explore.

Senator STEVENS. That is good flexibility. I am glad to hear that.

Senator LAUTENBERG. Mr. Chairman, may I just make a brief statement? I have to go to an Appropriations Committee markup and I would like to submit some questions for the record.

As Mr. Gordon would expect, I am disappointed in some of the his testimony, but I will give him a chance to respond to questions, if you do not mind, on the record—and Mr. Chairman, I would like to rejoin you later in the day if I might.

Senator GORTON. Thank you very much.

Senator STEVENS. I want to make certain that we send Senator Lautenberg notices of these hearings as we continue on in until we finish the subject matter, I hope.

Senator LAUTENBERG. I would be very, very pleased with that.

Senator GORTON. Mr. Wolfe, you have reservations about acceleration of a policy of eliminating or reducing the insignificance of foreign fishing in these bills, but you say we have made steady progress in that direction already under current law.

When, in your view, would foreign fishing be reduced to insignificant levels?

Mr. WOLFE. No. 1, Senator Gorton, as far as accelerating the process of eliminating foreign fishing within our zone, I would be in total support of that concept when the U.S. industry has the capability to harvest and to process the resources within our exclu-

sive economic zone. I cannot give you a finite date, if I understand your question correctly, as to when I would foresee the total elimination of foreign fishing in our zone.

But let me underscore that I totally support accelerating the process, and I think what we are doing today—and what we have been doing on the House side—is just looking for the most appropriate mechanism.

Senator GORTON. That does lead to the question, however, which is the cart and which is the horse? Can you eliminate where you have all of the ability to harvest in the process, or do you have to have a date at which that elimination is going to take place in order to develop that capability?

Mr. WOLFE. Yes, sir, that is a very good point that is made often, and it is also a two-edged sword. If the elimination is made too soon, would that possibly prove detrimental to our U.S. industry? It is a two-edged sword. And that is why we are moving as cautiously as we are in this hearing, and as we have been doing on the House side, so we can do the right thing to protect our industry.

Senator GORTON. Do you think that the Japanese and Koreans would have relatively easy access to alternative fisheries in the case of a relatively rapid phaseout?

Mr. WOLFE. Would the Japanese and Koreans have access to alternative fisheries outside of the United States? I could not answer that question. I do not know.

Mr. Gordon said he could respond to that.

Mr. GORDON. It is very doubtful, Senator. Looking around the world—we have been taking a look at it—there is probably only one area where there are relatively untapped, easily obtainable resources, and that is probably the Patagonian Shelf off Argentina. It is doubtful whether they would have ready access to that.

I see an accelerating pattern all around the world of throwing out the distant water fleets or charging higher and higher fees or imposing stricter and stricter enforcement regimes to stop poaching and indiscriminate fishing and this sort of thing.

So I doubt seriously if they have any place they can readily go to to make up the difference.

Senator GORTON. Mr. Wolfe, I think you mentioned in your oral testimony that you have used considerations other than fisheries considerations—foreign policy concerns—only three times since the passage of the Magnuson Act.

Mr. WOLFE. To the best of my knowledge, yes, sir.

Senator GORTON. Have those uses been effective in implementing the foreign policy concerns to which they were directed?

Mr. WOLFE. Have they been effective? I believe that we have used this authority in three instances because of the Soviet Union's invasion of Afghanistan, Poland's imposition of martial law, and the whaling issue with Japan.

Senator GORTON. Certainly the first two were not spectacularly effective, were they?

Mr. WOLFE. With all due respect, Senator Gorton, I am here to discuss fishery issues. I think that in some instances, they have been a deterrent.

Senator GORTON. I am sorry that Senator Lautenberg had to leave, but I do want your comments with respect to one of his pro-

posals. You said that if we manage tuna under the Magnuson Act, we will have difficulty in negotiating multilateral tuna treaties.

Expand on that a little. How?

Mr. WOLFE. You understand very well that we have a different juridical position than other countries in the world, many other countries. We believe we are right. We believe tuna should be managed internationally. It has to be managed internationally to conserve the species. Conserving the species is obviously the name of the game in terms of the Magnuson Act.

I would point out that Senator Lautenberg said he was willing to discuss other mechanisms to reach this goal, and I was quite happy to hear that statement.

We do have within our law a provision whereby, if a foreign country seizes one of our tuna vessels in a zone that we do not recognize, then we would mandatorily embargo its tuna fishery products coming into our country. We have done this recently with Papau New Guinea and the Solomon Islands.

I am convinced that, not because of the embargo but because our juridical position is correct, it has been an important lever in our negotiations with the 15 island nations that we are negotiating with now in the South Pacific for a regional tuna licensing agreement.

Senator GORTON. Mr. Chairman, we have so many people to hear. I have a number of other questions for these witnesses—perhaps Senator Kasten has some.

Senator STEVENS. We all will have questions to clarify your statements. We will try not to make them long, but we would like to get them precisely.

Senator Kasten?

Senator KASTEN. Mr. Chairman, I have no questions at this time.

Senator STEVENS. Thank you very much.

Gentlemen, we appreciate your starting off this round of review of this act. I think we will be back together when we get down to a final version we would like to have your comments on. There is a process of a combination along the line. We do have various bills before us, as you have indicated. Some people are more impatient than others. But we will be happy to work with you.

Mr. GORDON. We will be pleased to work with you, Senator.

Mr. WOLFE. Thank you.

Senator GORTON. Our next panel includes Messrs. Alverson, Alverson, Petersen, Petersen, Larkins, Evans, and Morgan.

They will come up and——

Senator STEVENS. How did Morgan get in there?

Senator GORTON. We also have Mr. Fisher, so he can come along, too.

It is obvious—you are only the second panel out of several here today—we are not going to have a great deal of time. We do have your written statements. They will be included in the record as if read. You are going to be limited to 5 minutes each, but even that is a long period of time, and those of you who manage to beat the 5-minute gun will get special awards.

We are going to start with Lee Alverson. Go ahead, please.

STATEMENTS OF LEE ALVERSON, MANAGING PARTNER, NATURAL RESOURCES CONSULTANTS; BOB ALVERSON, MANAGER, FISHING VESSEL OWNERS ASSOCIATION; RUDY PETERSEN, PRESIDENT, HIGHLINERS ASSOCIATION; H.A. (BERT) LARKINS, GENERAL MANAGER, MARINE RESOURCES CO., INC.; TED EVANS, ALASKA FACTORY TRAWLER ASSOCIATION; ROBERT F. MORGAN, PRESIDENT, PACIFIC SEAFOOD PROCESSORS ASSOCIATION; DENNIS PETERSEN, NORTH PACIFIC FISHING VESSEL OWNERS ASSOCIATION; AND R. BARRY FISHER, PRESIDENT, MIDWATER TRAWL COOPERATIVE

Mr. LEE ALVERSON. Mr. Chairman, I appreciate the opportunity to speak before this group on the MFCMA. I am going to speak today on the concept of phaseout as it relates to a study undertaken by Natural Resource Consultants of Seattle. The study was entitled "The Americanization of the FCZ: A Discussion Paper."

The paper itself, Mr. Chairman, dealt with evaluation of the growth of the fisheries, change in supply, the economic contribution to growth of the fisheries, the factors that were essential in stimulating the recent growth of northeast Pacific, and then examined whether alternative policies are necessary to continue the process of Americanization of the FCZ.

Very quickly, in repeating what some others have said in terms of the growth of the fishery, I think it is pretty obvious now that this year the United States will harvest about 44 percent of the total harvest, and will be the largest fishing nation in the northeastern Pacific, producing about 1 million metric tons of groundfish from the area. Foreign fishing, obviously, is still larger than U.S. production.

The economic contribution of this growth of the industry has been about $220 million since the MFCMA went in. About $180 million of that can be considered as new growth. So there it is obvious we have had significant contribution, most of that in the area of joint ventures, but also some in the area of the new factory trawler fleet and the growth of the sablefish line fishery.

If you look at the supply, Mr. Chairman, the supply of fish to processing sectors has not basically changed. That is, the foreigners are receiving about as much or more fish now from the FCZ off Alaska and off Oregon, Washington, and California as they did at the onset of the MFCMA, most of that being supplied by the joint venture activity. So we have had significant growth. The joint venture has been the significant element of that growth.

If we examine the question of where did that growth come from, what were the governing factors—obviously, there are a lot of factors involved including the status of the resources—new technology, world marketing trends, status of resources in other areas of the world. But if you sort it out carefully, you will find out that control over the resources and the leverage that Congress and certainly the Senate and the House has exerted in terms of the Americanization process have been the major dominating elements in fostering growth. And without that, most of the gains made in the northern Pacific would not be there today.

In looking at the future, our analysis generally comes to the conclusion that obviously you can proceed under existing policies

maintaining the status quo, or you can look at alternative policy. Our conclusion is that with a policy of maintaining the status quo there will be some continued growth of JV's, but the Americanization process will be extremely slow. And that if you expect to promote the concept of full Americanization, as follows by APSIC, the Alaska Pacific Seafood Industry Coalition—that is, the full Americanization of both the processing and harvesting sectors—you are going to have to change the policies if you want to stimulate that growth.

Our view is that you would make a major mistake if you do not make a decision on new guidelines this year. Currently there is tremendous economic uncertainty by the financial institutions, whether or not they should invest in shoreside processing, at-sea processing; should they get in joint equity relationships? Until you resolve that policy issue and establish the guidelines, I think that rather than stimulating growth, you are going to have increased problems in the fisheries, uncertainty to the industry, and major sectors of the Pacific northwest will be at each other's throats.

So we urge you to examine the congressional policies. We think there are many components of the legislation proposed by Mr. Gorton that will provide the necessary stimulation for the industry to move forward, and we urge you to make a decision on the issue this year .

Most of the industry would feel that it is better to make a decision either that you are not going to change the ground rules and will live with the existing rules or will establish new guidelines. Do not leave it in a state of confusion. The financial community needs an answer if we are going to move ahead in the development of our fisheries.

Thank you.

[The statement follows:]

STATEMENT OF D.L. ALVERSON, NATURAL RESOURCES CONSULTANTS

Mr. Chairman, my name is Dayton Lee Alverson. I am currently the Managing Partner of Natural Resources Consultants of Seattle, Washington. I wish to thank the Committee for the opportunity to testify on the reauthorization of the MFCMA. Natural Resources Consultants makes it a policy that its members not take advocacy positions before public groups. Therefore, my testimony today will be concerned with a study undertaken for the Highliners Association dealing with alternatives for the Americanization of the U.S. Fishery Conservation Zone. Copies of that study have been submitted to the Committee.

Mr. Chairman, the study undertaken for the Highliners involved five questions concerned with past and future development of fisheries in the northeastern Pacific region. These were as follows: (1) what is the extent of development of U.S. fisheries in the FCZ off the Pacific Northwest and Alaska since the implementation of the FCZ; (2) how has development impacted historical users; (3) what factors have been instrumental in fostering growth of these fisheries to date; (4) what has been the economic contribution resulting from the growth of these fisheries; and (5) what are the likely implications of various phase-out goals to the Americanization process. The findings regarding these questions are summarized below.

1. Although there has been considerable concern over the pace of growth of U.S. fisheries, nationally the Pacific Northwest fisheries have shown impressive progress over the past five years. The following gains can be noted. Complete Americanization of the sablefish fishery in the Gulf of Alaska has been realized. The projected 1985 harvest by U.S. fishermen is approaching one million metric tons or about 44 percent of the OY available for bottomfish off Oregon, Washington and Alaska. The estimated value of catches by joint venture vessels will approach $95 million this year and the ex-vessel value for the U.S factory trawler fleet will reach $50 million. The value of bottomfish processing is approaching $38 million and ex-vessel value of

all components of the U.S. bottomfish fleet in the region will be about $220 million in 1985. This year the northeastern Pacific U.S bottomfish fleet is expected to catch more foodfish from the U.S. FCZ than all other U.S. fisheries combined.

2. It is apparent from the above statistics that there have been radical changes in the roles played by the key fishery nations in the northeast Pacific since the implementation of the MFCMA in 1977. U.S. harvests, in particular, have grown rapidly. NRC estimates that this year U.S. fishermen will become the dominant harvesters of fish in the northeast Pacific FCZ off the U.S. Surprisingly, however, there have not been any major changes in the supply of fish available to processors of other nations. In 1985 Japan will receive about as much bottomfish as in 1976, while the supply to Korean processors should be even greater than in the year preceeding the implementation of the FCZ. Only the U.S.S.R., whose directed fishery was discontinued following the invasion of Afghanistan, receives significantly less fish now than it did prior to passage of the MFCMA. The important point is that there was a major shift from directed foreign harvesting to domestic joint venture harvesting without major supply disruptions abroad.

3. The NRC study concludes that a variety of factors, including world price trends, status of U.S. and foreign fishing resources, the collapse of the crab fishery, new technology, and world politics have all had an influence on the rapid growth of the U.S bottomfish fishery in the northeast Pacific. Nevertheless, the study concluded that control over the resources has been by far the dominant factor influencing growth of the fisheries within the FCZ; and that without this control, use of the allocation authority it provides, and the "Fish and Chips" principles, most of those gains would not have occurred.

4. The economic benefits to the nation as a result of these gains in northeastern Pacific fisheries are estimated at about $185 million for 1985. New employment has been provided for between 1,000 and 1,500 individuals. Growth in bottomfish harvesting by U.S. vessels has helped greatly to reduce the economic shock caused by the collapse of the crab fishery. New exports of bottomfish and fish products are estimated at close to $185 million for 1985. Unfortunately, in terms of balance of payments effects, increased imports of surimi-based products have more than offset the expanded U.S. exports of bottomfish.

5. The consequences of various policy developments for the future of the Americanization process are more difficult to interpret since the intent of Congress as regards the preference given U.S. fishermen and harvesters is interpreted differently by the various users of the resources. We have accepted the goal of Americanization as being consistent with that adopted by APSIC: that is, the full use of the resources within the U.S. FCZ by American fishermen and processers. Both Congress and the recent U.S. Administration appear to have supported this goal. In the NRC study we did not attempt to evaluate the merits of the goal itself or to consider alternative goals, but directed our efforts to evaluating the implications of various policy options on achieving the goal of full Americanization as described above.

In particular, NRC evaluated the course of Americanization in the Pacific Northwest under current and alternative policy arrangements; that is, the status quo, phase-out of directed fishing and phase-out of both directed and joint venture fishing.

We have concluded that with no change in policy joint ventures would continue to grow; there would be some continued growth in selected sectors of the processing sector; and the U.S. converters and marketers would be largely unaffected. Developments in the processing sector could proceed more rapidly if industry-to-industry meetings continued to produce agreements acceptable to both sides. However, the increasing fragmentation of the U.S. industry will make it extremely difficult for the industry-to-industry mode to succeed; and without this mechanism in place, progress would occur slowly if at all because production of products for U.S. and foreign markets would be largely supplied by foreign processors working with U.S. over-the-side purchases. Part of this conclusion relates to competitive costs of operations. It also relates to the desire of existing foreign operators to protect past investments, commitment to personnel and control over the marketing process.

Progress of Americanization under phase-out of foreign directed fishing alone, in our view, could speed up the growth of joint ventures (depending on the timeframe) and would probably improve the opportunities for processors to become competitive in marketing certain high valued species. Large-scale processing of lower valued species, however, would be unlikely as long as adequate supplies were available to foreign processors from over-the-side purchases from U.S. joint venture vessels.

Phase-out of directed fishing and joint ventures would undoubtedly create significant leverage to force foreigners to consider alternative ways to maintain supplies. If foreign and U.S. markets turned to the U.S. processor to supply the product voids,

then the U.S. should be in a position to respond, providing foreign markets are opened to U.S. processors. We feel that the likelihood that U.S. firms could capture major markets in the U.S.S.R. and Korea for processed products is not high; large-scale foreign marketing growth is likely only in Japan. Even there, gains will depend on the response of the Japanese government and industry to U.S. phase-out legislation.

Marketing opportunities in the U.S. for fillets, steaks and blocks under a comprehensive phase-out plan would largely rest on capturing part of the void created as a resulted of reduced Korean imports; but this opportunity would be achieved only in competition with large-scale Icelandic, Canadian, European, African and South American imports of whitefish, which would be unaffected by phase-out legislation. Perhaps the largest U.S. marketing opportunity lies in providing surimi as base material to the rapidly expanding analog fish market.

The consequences of a comprehensive phase-out program, including joint ventures and directed foreign fishing, to current U.S. harvesters involved in over-the-side deliveries is not promising. There is considerable talk that these vessels would merely transfer their activities to U.S. processors. In reality, however, this would be difficult or impossible to achieve. Such a transfer assumes that U.S. processors will quickly expand to fill market voids in Japan or the U.S., and that the character of the expanding U.S. industry will require the use of vessels having the same characteristics as the existing fleet. Neither of these assumptions appears warranted. Furthermore, the possibility of coordinating phase-out of joint ventures with phase-in of U.S. processing, even if the fishery continued to harvest using extant vessels, seems remote. It is also unlikely that U.S. processors would, in a reasonable timeframe, undertake large scale processing and marketing of joint ventures species such as hake and yellowfin sole. These markets would simply be lost to the U.S. Thus, short-term phase-out of joint ventures could lead to a rapid escalation of bankruptcies in the U.S. fishing sector and potentially with no real gains in the processing sectors.

The phasing out of direct and joint venture fisheries would result in temporary reductions in supplies to U.S. converters, but these could quickly be made up from other sources. It would probably result in reduced imports of analog products, largely because there would be an increased shortage of raw material for Japanese and Korean processors.

NRC concluded that a simple phase-out of directed fishing and joint ventures would create major problems for harvesters and possibly for processors. We flet, however, that a compromise between these extremes was possible which would more effectively achieve the goals of Americanization without jeopardizing the gains achieved to date. NRC feels that your legislation captures many elements of such a compromise.

It has been suggested that additional restrictions or cost equalization on U.S. joint ventures may be necessary but we are doubtful that this can be supported by facts or is desirable. What is necessary, beyond sheer protectionism, is the opportunity for U.S. processors to access and compete in the Japanese marketplace or in the U.S. There is little evidence to suggest that joint ventures have led to increased competition for U.S. processors of fillets, steaks or blocks since implementation of the MFCMA, although this could occur if the supply of raw material to Asian countries is increased. This would not, however, occur under your proposed legislation.

In regard to competing on the U.S. market to produce surimi for the expanding analog manufacturers, there is no reason why U.S. producers could not provide competitively priced products of equal quality. No cost equalization is needed. The limitation seems to be corporate control by foreign producers which would freeze out U.S. sellers.

Both cost equalization formula and phase-out of joint ventures could result in a major setback of the Americanization goal. These options would force harvesters out of business without commensurate growth of U.S. processing. On the other hand, the legislation you have introduced does provide the leverage to secure gains within the processing sector through the establishment of an OY reserve. Within a few years this should lead to significant supply voids and, hopefully, purchases of U.S. processed products. Thus, it achieves the goal of providing processors the desired leverage without threatening the health of a viable harvesting sector of our industry. If there is a positive response to this leverage and a significant expansion of processing, the processor preference aspect of the MFCMA should be adequate to create additional market voids once TALFF has disappeared.

In conclusion, it is important to remind ourselves that the goal of the U.S. industry should be the phasing in of U.S. processing and harvesting activities. If this is to be achieved then accessing and becoming competitive in markets in both Asia and the U.S. will be extremely important. In the discussion of phase-out options, the

study by NRC assumed that any Congressional action would not lead to significant reprisals or major disruptions of business trends between the U.S. and historical fishing partners. This assumes a reasonable continuity of U.S./Japanese relationships, trade, etc. The manner in which phase-out occurs is therefore critical. Thus, the time frame in which phase-out would occur and the resources available to negotiate with current foreign partners become critical elements in generating the positive results desired for U.S. phase in.

Senator GORTON. Thank you.

Bob Alverson.

Mr. BOB ALVERSON. Mr. Chairman, thank you for the time to be able to comment on the reauthorization amendments before us. My name is Robert Alverson. I am manager of the Fishing Vessels Owners Association out of Seattle. The Vessel Owners Association is a trade association comprised of operators of vessels engaged in longline fishing in the North Pacific Ocean.

It is our opinion as an organization that we agree with the agreement that has come out of basically the people that are sitting at this table at this time and are included in Senator Slade Gorton's amendment to the FCMA. We are supportive of this. We feel that without the guiding parameters of phaseout that are set forth in this amendment and the immediate reduction of TALFF, that the infighting between the different U.S. sectors, the joint ventures, the vessels not involved in joint venture operations, the directed foreign fishing, processors—both shoreside and at sea—will hamstring timely and full Americanization and frustrate the investment community in the Pacific Northwest.

It is our opinion that the Japanese and foreign interests have conducted and continue to coordinate a masterful delayed rear guard withdrawal from their harvesting and processing activities in the Pacific Northwest, and a case in point is related in the written comments I have submitted to you.

Also in the written comments, I have included some of the Tokyo prices for a number of important species that we see as growth potential—included are sablefish, different rockfish, thornhead rockfish, turbot, Pacific cod, and Atku mackerel.

It is clear by the price structures in Japan at this time and the CPUE—catch per unit of effort—that we have noticed in experimental operations in the Aleutians and in different areas of the Bering Sea, that these prices warrant Americanization of these high-valued rockfish species.

The main problem is the vertical integral integration that the Japanese have on these high-priced species between control of the resource and control of their markets. This is why we feel the immediate reduction of TALFF and a timely phaseout are necessary.

Without a definitive statement from Congress on Americanization that addresses raw product control and time certain phaseout, there will continue to be delays in Americanization due to the inevitability of politics centered around the directed foreign fishermen, the joint venture fishermen, U.S. processors, and vessels not involved in the joint venture activities, all of which are competing and significantly dependent on the same markets.

The dependency on similar markets which are largely controlled in Japan can only be countered by U.S. interests gaining harvesting control of the raw product. Therefore, we feel it is essential

that the legislation put forward by Senator Slade Gorton be enacted.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT D. ALVERSON, MANAGER, FISHING VESSEL OWNERS' ASSOCIATION

Chairman:

My name is Robert D. Alverson and I am the manager of the Fishing Vessel Owner's Association.

The Fishing Vessel Owners' Association is a trade association comprised of the operators of vessels engaged in fishing in the North Pacific Ocean. At present, Association members operate in the harvest of halibut, sablefish, lingcod and Albacore tuna. Our vessels are all high seas vessels covering the Pacific Ocean from the waters off Mexico to those adjacent to the Soviet Union in the Bering Sea.

The membership of the F.V.O.A. appreciates this opportunity to express its comments concerning the Magnuson Fisheries Conservation Management Act Reauthorization. We would specifically like to address the issue concerning the time-certain phaseout and the 1986 mandatory cut of foreign allocation of foreign fishing introduced by Senator Slade Gorton.

The F.V.O.A. is supportive of this amending legislation, in particular Section 201(b)(1)(A). This section requires a 60% reduction in foreign fishing during the calendar year 1985. The F.V.O.A. supports this level or the 40% reduction we requested before. A required reduction of these magnitudes is needed to facilitate the Americanization of the fishery resources in the North Pacific.

It is my personal opinion that the Japanese have conducted and continue to coordinate a masterful, delayed rear guard withdrawal from their harvesting and processing activities in the Pacific Northwest. A case-in-point is as follows as it relates to the sablefish (blackcod) industry:

The blackcod resource has a potential harvest of 20,000 metric tons in the Gulf of Alaska, 5,000 m.t. in the Bering Sea and Aleutians, 10,000 m.t. off Washington and Oregon and 3,000 m.t. off British Columbia. Until the 200-mile legislation was passed, this resource was essentially harvested in its entirety by 22 vessels from the Japanese Longline and Gillnet Association. There were also small deliveries from U.S. and Canadian vessels, but never any volumes that would challenge the market hold the Japanese had on this resource.

It was only when both Canada and the U.S. passed their respective legislation extending fishery jurisdiction to 200 miles that market influences began to change for the U.S. and Canadian blackcod industry. The Canadians were the first to eliminate foreign directed fishing for blackcod. The U.S. severely reduced the blackcod quotas in Alaska due to past over-fishing practices, but allowed the majority of the blackcod resource to be taken by the Japanese. The Japanese were also quickly eliminated from the lower Pacific States; i.e., Washington, Oregon and California due to an over-fished resource.

The Japanese, in order not to stimulate the price of blackcod in Alaskan ports and thereby facilitating their own elimination of their directed fishing activities, sought as much TALFF as they could get from the Alaska resources and supplied their resource deficit with imports, first from British Columbia and then from the lower Pacific States. The final purchases came from Alaska processors and only from those areas in Alaska that the Japanese did not lose allocations from. This coordinated purchase of a high value resource enabled the Japanese to sustain their directed fishing operations for a significant time off Alaska until 1984 when they were eliminated.

The act of elimination of foreign countries from the FCZ fishery for blackcod was not as easily done as would be thought. The FCMA idea is supposed to be when the U.S. processors and fishermen have the capacity and intent, the quota should belong to the U.S. This was not the way it happened in the blackcod fishery in Alaska.

The purchasing practice of the Japanese was only one tactic. The other influences included the following:

(a) The Scientific and Statistical Committee being lobbied by U.S. J.V. advocates and foreign interests questioned the intent and capacity of the U.S. Fleet and told the Council that the U.S. industry could not take the blackcod harvest.

(b) J.V. advocates who saw the large dollar potential in blackcod lobbied the Council and Scientific & Statistical Committee against quicker Americanization of the blackcod resource because they, along with the foreign-directed fishing, would not be allowed to participate in the harvest of the resource once it was designated a totally domestic resource. There were also attempts to increase OY above what was healthy for the resource in order to create an artificial supply for TALFF and provide for J.V. consideration.

(c) The U.S. fishermen who have the inside-the-baseline J.V. in Alaska on herring with the Japanese, came to testify at the Council, that, if the Japanese were eliminated from blackcod, the Japanese could not justify bringing their vessels over to participate in the herring fishery.

(d) National Marine Fisheries Service decided that the U.S. industry would not take the resource if the Japanese were eliminated and advised against elimination of TALFF allocations.

All of these questions and assorted politics entered the North Pacific Council in December of 1983. The U.S. longline fishermen and the processors they deliver to, made an absolute "son-of-a-bitch" out of themselves before the Council when it appeared the above agency positions and assorted J.V. and foreign-directed fishery politics would rule the day. The following action resulted:

The Council gave the Japanese the quota in the Gulf of Alaska, except for S.E. Alaska. The Japanese Longline Association members, responding to the articulations from the U.S. industry, gave the U.S. industry a handshake in the back of the Council's auditorium and promised the U.S. industry during 1984 the Japanese would not enter the Gulf of Alaska until October 7, 1984, at which time, if the U.S. industry had not harvested the blackcod resource, the Japanese got it; if not, it belonged to the U.S. fishermen.

The Vice Chairman of the Scientific and Statistical Committee made a $10.00 widely publicized bet with the Chairman of the Advisory Panel, who was adament about the capability of U.S. industries' capacity and intent, that the U.S. industry would harvest the quota. On September 21st, Robert McVey, Director of the NMFS in Juneau, closed the Gulf of Alaska for blackcod fishing because the U.S. industry had taken the harvest. On October 7th, the Japanese presented to the Director of the North Pacific Fisheries Management Council, Mr. Branson, their signed letter from the U.S. State Department, giving them blackcod TALFF in the Gulf of Alaska. Due to an insufficient quota being left, no foreign directed harvest of blackcod was permitted. The Chairman of the Advisory Panel collected his $10.00. The U.S. fishermen in one year created a $30,000,000.00 ex-vessel industry without building one new vessel or new processing plant. In all probability, this Americanization should have taken place three to four years earlier, but the politics prevented it.

This scenario of politics pitting J.V. interest against U.S. shorebased and at-sea processing and U.S. catcher vessels not involved in J.V. activities will be played out time and again if the time-specific phaseout is not implemented.

The large reduction in TALFF scheduled for 1986 is justified for either 40% or 60% because the prices of turbot, Atka mackerel, rockfish, and perch, like sablefish, are at a level in Japan that U.S. vessels and processors can harvest and export to Japan and make money. The only thing precluding U.S. participation is that the same Japanese market protection of supply that was used with blackcod is being employed. There is a certain supply level that is consumed in Japan of these species and that tonnage is being supplied by existing Japanese vessels operating off Alaska. The sizeable reduction in TALFF will produce immediate markets for U.S. vessels and processors for the high valued resources in Japan. The Japanese consumer wholesale market is paying the following for the below listed headed and gutted species:

Sablefish	$ 2.31 to 1.90 lb.
Rockfish	2.96 to 1.94
Thornhead Rockfish	3.91 to 1.98
Turbot	1.20 to .80
Pacific Cod	.83 to .45
Atku Mackerel	2.50 to .80

There is only one way to get these markets into U.S. hands and that is to take the control of supply and give it to the U.S. industry. The current FCMA legislation should do this,but it is not. The immediate elimination of 40% to 60% of TALFF could accomplish this very quickly on the high valued species.

Without a definitive statement from Congress on Americanization that addresses raw product control and time-certain phaseout, there will continue to be delays in Americanization due to the inevitability of the politics centered around the directed foreign fishermen, the J.V. fishermen,U.S. processors and vessels not involved in J.V. activity, all of which are competing and dependent on the same markets. The dependency on similar markets which are largely controlled by Japanese interest, can only be countered by U.S. interests gaining harvesting control of the raw product. Therefore, it is essential that legislation requiring a time-certain phaseout be instituted as well as an immediate reduction of TALFF allocations.

Senator GORTON. Thank you, Mr. Alverson.

Rudy Petersen.

Mr. RUDY PETERSEN. Thank you, Mr. Chairman, for the opportunity to address your committee. My name is Rudy Petersen, commercial fisherman, Seattle, WA.

My remarks today will be concerned with the language introduced by Senator Gorton which would modify the MFCMA to establish conditions for phasing out foreign-directed fisheries.

Mr. Chairman, I am first and foremost a fisherman, and I believe a successful one. I am owner and part-owner of several crabber trawlers, and am considering building a large freezer trawler. I also am president of the Highliners Association, an organization comprised of trawlers, joint venture trawlers, and factory trawler owners. I am speaking today in their behalf.

I believe the first two principles adopted by Alaska Pacific Seafood Industry Coalition should continue to be the guiding philosophy of the Americanization process. There is a mutual need for viable U.S. harvesting and processing sectors in order to maximize the social and economic returns potentially available from the U.S. FCZ. Phase-in should be designed to augment existing marketing opportunities for U.S. processors and U.S. fishermen, and not at the expense of either party.

If we proceed with these principles in mind, there will be reasonable harmony and ample opportunity for all major sectors of our industry to participate in fisheries development.

Mr. Chairman, the Highliners Association feels strongly that the next stage of the evolution of the U.S. fisheries should be the development of its at-sea and shoreside processing activities. We, of course, expect to hear the old cries that the U.S. industry cannot perform and that it will not provide equal quality products at competitive prices. These are the same arguments that were dragged out to slow the growth of our current bottom fish operations, and they proved to be false.

The phaseout legislation introduced by Senator Gorton is in the Highliners' view, an admirable compromise between the interests of joint ventures and processors. It is consistent with the goals stated by APSIC. It creates the leverage necessary to test the merits of our processing sector, while allowing for continued slow growth of our joint ventures. It provides the opportunity for a continued dialog between the U.S. industry and major foreign fishing nations which could lead to future gains for the United States. And it allows councils to make decisions on how to achieve the goals of Americanization of small-scale foreign fishing.

The Highliners encourage continued support of the phaseout legislation. We would, however, propose several small changes to bring the legislation into conformance with that supported by many sectors of the Northwest industry. We would suggest altering the division of reserves for species other than pollock to a 60–40 split between harvesters and processors.

Also, small language changes are needed to clarify what is to be reduced each year which could be taken care of by your staff.

In supporting this legislation, we recognize that the Gorton proposal constitutes a compromise among many sectors of the indus-

try. Thus, we urge you to recognize the sensitivity of the proposal and attempt to maintain its major components.

In conclusion, we should like to make clear that we recognize the contribution the foreigners have made to the growth of our fisheries, and we do not support phaseout only to eliminate foreign fishing. The goal of Congress and the U.S. industry must be development of the U.S. industry. We believe that legislation will lead to phasein, but if this does not occur, then Congress must reexamine its efforts at the conclusion of any phaseout schedule and reconsider alternatives.

We are, of course, pleased to see that Senator Stevens has also introduced legislation for the phaseout, but feel that the loss of ability to negotiate extension of fishing to 1995, if commitments can be gained for assured markets, is not in the best interest of the industry and may in fact stall the Americanization process rather than help it.

We hope that you would support this element of Senator Gorton's legislation; also, the maintenance of a small residual directed fishing level may be very important also to continue existing JV markets on both the east and west coasts of the United States.

Thank you.

[The statement follows:]

STATEMENT OF RUDY PETERSEN, PRESIDENT, HIGHLINERS ASSOCIATION

Thank you, Mr. Chairman, for the opportunity to address your Committee. My remarks today will be concerned with the language introduced by Senator Gorton which would modify the MFCMA to establish conditions for phasing out directed foreign fisheries.

Mr. Chairman, I am first and foremost a fisherman and, I believe, a successful one. I am owner and part owner of several crabber-trawlers and I am considering building a large freezer trawler. I am also the President of the Highliners Association, an organization comprised of crabbers, joint venture trawlers and factory trawler owners. I am speaking today on their behalf.

Although the group is relatively small in number, its members have been pioneers in the development of joint ventures and at-sea processing. Vessels owned by the Highliner members are responsible for the vast majority of the northeastern Pacific cod catch processed by the U.S. industry and members have played an important role in joint ventures in the region. Thus, we represent a significant and diverse components of the expanding U.S. bottomfish industry.

Since their formation, the Highliners have been dedicated to the development of policies which will enhance the position of the U.S. fishing industry. We worked closely with Senator Magnuson's office in formulation of the Fish and Chips amendment to the MFCMA. With the assistance of the late Senator Jackson, the Highliners promoted and organized the first U.S./Japanese industry to industry meeting, and in collaboration with the Pacific Seafood Processors Association (PSPA), we were instrumental in creating the Alaska Pacific Seafood Industry Coalition (APSIC), which over the past few years has constituted an important fisherman/processor forum to promote actions and policies favoring the Americanization of the U.S. FCZ.

I believe the first two principles adopted by APSIC should continue to be the guiding philosophy of the Americanization process:

1. There is a mutual need for viable U.S. harvesting and processing sectors in order to maximize the social and economic returns potentially available from the U.S. FCZ, and

2. Phase-in should be designed to augment existing marketing opportunities for U.S. processors and U.S. fishermen and not at the expense of either party.

If we proceed with these principles in mind there will be reasonable harmony and ample opportunity for all major sectors of our industry to participate in fishery development.

Mr. Chairman, since 1980 there has been a phenomenal growth of the bottomfish fisheries off the Pacific coast, particularly off Alaska. This growth has occurred in

joint ventures, the sablefish line fishery, and at-sea and shoreside processing of Pacific cod. It is apparent from a recent analysis undertaken by Natural Resources Consultants of Seattle, that a variety of factors has influenced this growth, including (1) the collapse of the king and Tanner crab fisheries, (2) world market trends, (3) the status of bottomfish resources within the U.S. FCZ and other regions of the world, and (4) new technology. The NRC report entitled "Americanization of the U.S. Fishery Conservation Zone" concludes, however, that one factor alone stands out as dominant in the Americanization process: "control over the resources." Without this control and the exercise of the allocation authority under the preference provisions of the MFCMA and the Fish and Chips policy, most of these gains would not have been achieved. Mr. Chairman, I do not think there is any doubt that the gains we have made to date owe their success to the MFCMA and the strong support of Congress and the Administration to foster the Americanization process.

The Highliners Association is convinced that the continued support of Congress is necessary if we are to make significant gains for U.S. fishermen and processors in the future. Although we have made major strides in the past few years, these gains both in harvesting and processing reflect response to U.S. control over the resources and not an independent willingness of foreigners to pursue what the U.S. industry feels are economically viable alternatives. At the onset of joint ventures American fishermen were told they did not possess the harvesting capacity, their vessels were too small and that U.S. fishermen lacked experience. These doubts were quickly dispelled as U.S. fishermen exceeded all expectations of their joint venture partners. This so-called inadequate fleet will produce close to 1 million metric tons of fish this year with a value approaching $220 million and the catch rates of these vessels are among the highest in the world.

A similar story can be told for the U.S. line sablefishery. The fishery, which was almost non existent before the implementation of the MFCMA, grew rapidly following the opening of new markets: markets which were not available to U.S. fishermen until the Council reduced levels of foreign harvest.

We were also told that we could not put competitive priced fillets of equal quality on the U.S. market using U.S. labor, but that myth has also been dismissed.

It is quite true that the most significant gains achieved in our bottomfish fisheries over the past five years have been in the growth of joint ventures and fisheries for certain high valued species. These are the sectors of our industry that have benefited most from Council and Congressional actions concerned with resource allocation. Threats of reduced allocations to foreign nations or the possibility of increased directed fisheries if adequate purchases were made from U.S. fishermen led to rapid growth of these industry sectors. It has, however, been more difficult to expand U.S. processing activities at a similar pace because foreigners have chosen to replace lost harvest through over-the-side purchases from U.S. vessels. As a consequence, there has not been similar pressure to promote the Americanization of our processing sector.

Mr. Chairman, the Highliners Association feels strongly that the next stage in the evolution of U.S. fisheries should be the development of its at-sea and shoreside processing activities. To accomplish this it will be necessary to create policies similar to those that acted as a catalyst for joint ventures—that is, a supply shortage that can be replaced only through the purchase of U.S. processed products. We, of course, expect to hear the old cries that the U.S. industry cannot perform and that it will not provide equal quality products at competitive prices. These are the same arguments that were dragged out to slow the growth of our current bottomfish operations, they proved to be false.

We suggest you ignore the arguments that our industry cannot perform and that we will be locking up valuable food resources needed by the world. The U.S. fleet, as stated earlier, should produce close to 1 million tons in 1985 from the FCZ off Oregon, Washington and Alaska and the total production from these areas will be greater than the catch in the year preceeding implementation of the FCZ. This does not suggest locking up resources.

We, of course, cannot guarantee that the processing sector will blossom in a similar manner to that of joint ventures given the same leverage, but Congress should be alert to the fact that there already exists a new element in the U.S. fleet: factory trawlers. There are larger freezer line vessels on the grounds, the shoreside production of surimi is coming on line and the industry as a whole is more agressive and enlightened about the opportunities available.

The phase-out legislation introduced by Senator Gorton is in the Highliners view an admirable compromise between the interests of joint ventures and processors. It is consistent with the goals stated by APSIC. It creates the leverage necessary to test the merit of our processing sector while allowing for continued slow growth of

our joint ventures. It provides the opportunity for a continued dialogue between the U.S. industry and major foreign fishing nations, which could lead to future gains for the U.S., and it allows councils to make decisions on how to achieve the goals for the Americanization of small-scale foreign fishing.

The Highliners encourage continued support of the phase-out legislation. We would, however, propose several small changes to bring the legislation into conformance with that supported by many sectors of the northwest industry. We would suggest altering the division of reserves for species other than pollock to a 60/40 split between harvesters and processors. Also small language changes are needed to clarify what is to be reduced each year which could be taken care of with your staff.

In supporting this legislation we recognize that the Gorton proposal constitutes a compromise among many sectors of the industry. Thus, we urge you to recognize the sensitivity of the proposal and attempt to maintain its major components.

In conclusion, we should like to make clear that we recognize the contribution the foreigners have made to the growth of our fisheries and we do not support phase out only to eliminate foreign fishing. The goal of Congress and the U.S. industry must be development of the U.S. industry. We believe the legislation will lead to phase in but if this does not occur then Congress must reexamine its efforts at the conclusion of any phase out schedule and reconsider alternatives. We cannot in good conscience support locking up over a long period valuable food resources if either sector of the industry cannot perform.

Senator GORTON. Thank you, Mr. Petersen.

Mr. Larkins.

Mr. LARKINS. Thank you, Mr. Chairman. I am Bert Larkins. I am the general manager of Marine Resources Co., International, which is an American-Soviet joint venture company.

Just to put my testimony into perspective, we expect to pay about $30 million this year to American fishermen for the purchase of about 200,000 metric tons of ground fish off Alaska and off the Pacific Northwest.

We have submitted a great deal of testimony for the record. I will not repeat that. That testimony deals with some of the language changes we think are necessary to bring your bill into conformance with that of the industry coalition.

I would like to mention at the outset that if we were called on to unilaterally construct our own legislation, it would not look anything like what we are reviewing today. The last year or so, though, has bothered some of us because we are starting to witness a great deal of divisiveness, at least in the Western fishing industry.

Recognizing that, the members of this panel and others spent a great deal of time in the last 6 or 8 months, trying to find a reasonable compromise. We found one. Your bill, S. 1386, is very close. And what I would like to do is spend a few minutes now telling why I support that compromise. We have a choice to make over this next few months. One is, can we go about our business of fishing, which I prefer to do. The other is, do we "gird our loins" and prepare for an internal battle that could be very disastrous for our fishing industry? That I am trying to avoid.

The industry initiative that came out of this coalition over the last few months has three primary components. Now, this is very close to S. 1386, but with a few distinctions that I think will become clear here. The first of these primary components is that the total allowable level of foreign fishing—TALFF, as it is referred to—would be reduced on a country-by-country and fishery-by-fishery basis, so that within a period of 4 to 9 years, only a "residual foreign directed fisheries" would exist.

There is no date specific for that final phaseout, other than it would be within a 4- to 9-year period. These residual fisheries that I just mentioned could go on for some time, but would be no greater than 65,000 metric tons per country, per management council region.

A second major element is that annual reductions in TALFF would be added to the joint venture allowable catch—JVP is the term used—and to the domestic processor allocations, and that is the DAP, according to the following formula. For pollock, 60 percent of this reduction in TALFF would go to the DAP for American processors; 40 percent would go to JVP for increased joint venture catching opportunities.

For all other species, it would be the reverse. That is, 40 percent of the reduction in TALFF would go to the domestic processors and 60 percent to the joint venture fishermen. These different ratios simply reflect what we have heard from the processing component of our industry. Our first priority is to Americanize pollock. We are in total support of that. There are a lot of other species for which we have heard very little interest expressed on the part of the American processing industry, and we think that those species, such as very small flounders in the Bering Sea, and in enormous quantities, should remain available for American fishermen until there is a move by American processors to utilize them.

I would like to just take a minute to run through an exercise very quickly with you to show you just how this scheme would work, at least as I see it.

Let us just consider a single foreign nation that in 1985 has a directed allocation of 500,000 tons of pollock off Alaska. In 1986, according to our coalition position, that allocation would automatically drop by 40 percent, so we go down to 300,000 tons. That 200,000-ton decrease in allocation to this country would be allocated as follows—120,000 tons to the DAP or domestic processors; 80,000 tons to the JVP.

You add those onto the 1985 levels of DAP and JVP, and then would have the new 1986 levels for each fishing component. Then, I think it is anticipated that during 1986 there would be a round of bilateral negotiations with the various countries that fish off our coast. If during 1986 those negotiations with the country that we are hypothetically talking about here, we found that that country was doing a reasonable job of promoting the development of U.S. fisheries, we might—the Government might say, OK, now we begin a 5-year phasedown.

So in that case, of the remaining 300,000 tons, each year that country would lose 60,000 tons of its remaining allocations. That 60,000 every year would be split 60/40, 60 to processors, 40 to the joint venture harvesters.

At the end of this period when the phaseout was completed, the 500,000 tons that originally was allocated to that country would have been shared in the following way: 300,000 tons would have gone to American processors; 200,000 tons would have accrued as new joint venture opportunities for joint venture fishermen.

This is the substance of the industry coalition position. As others have said here, any significant departure from the rather carefully constructed and thoroughly negotiated compromise, even if it is

just for the sake of simplicity of drafting of the legislation, has a very high risk of losing support for anything that might result.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF H.A. (BERT) LARKINS, GENERAL MANAGER, MARINE RESOURCES COMPANY INTERNATIONAL

Mr. Chairman, I am Bert Larkins, General Manager of Marine Resources Company International (MRCI). I appreciate this opportunity to appear before the Committee to testify with respect to the proposed amendments to the Magnuson Fishery Conservation and Management Act (MFCMA).

Marine Resources Company International (MRCI): MRCI is a State of Washington joint equity partnership owned equally by Bellingham Cold Storage, a privately-held U.S. corporation, and V/O Sovrybflot, a commercial corporation of the Soviet Ministry of Fisheries. We are headquartered in Seattle where we employ 20 Americans and one Soviet national on a permanent basis. In addition, we hire annually about 50 American seasonal technicians that represent us on the fishing grounds.

As the nation's largest buyer of U.S.-caught groundfish, and as a well-established fishing company, MRCI has a vital interest in the future development of our fishing industry. Our production from the U.S. Exclusive Economic Zone (EEZ) in the Northeastern Pacific Ocean has grown steadily from less than 2000 MT in 1978 to 163,500 MT in 1984 with 200,000 MT projected this year. We anticipate employment of 50 American trawl vessels and payment to these U.S. fishermen of about $30 million this year. Our targeted species have been primarily Pacific whiting from off the coast of Washington, Oregon and California as well as yellowfin sole, other flounders, Pacific cod and Atka mackerel in the Bering Sea/Aleutian Island region.

Unlike many so-called "over-the-side" operations, MRCI is a joint equity partnership. We contract with independent American fishermen to purchase from them, on the fishing grounds, ground-fish not otherwise fully utilized by the domestic fishing industry. The fishermen are paid monthly in cash for their catches. Those catches are delivered at sea to Soviet processing vessels for MRCI's account. Through a barter arrangement MRCI is reimbursed for those "raw fish" deliveries with processed fish products, some of which come directly from our fisheries, others are of Soviet origin. We in turn, sell those products in international markets, many of which we have either found or developed. Thus, since the inception of our joint equity operation nearly a decade ago, we have built a viable fishing enterprise providing permanent employment for Americans, a significant market for U.S.-fishermen, and the development of new markets for the entire industry.

Industry Coalition Compromise Agreement: At the outset I would like to make it clear that if we had been asked unilaterally to draft legislation at this time we would not have proposed any of the bills which are before the Committee today. We firmly believe that the MFCMA, in its current form, has been extremely successful in transferring the utilization of American fishery resources from foreign fishermen to those components of the U.S. industry that have been willing to seize the opportunity. Therefore, our first preference is for a straight reauthorization of the MFCMA, as originally introduced by Senators Danforth, Packwood, Gorton and Stevens in the form of S. 958 earlier this year.

However, we have been very concerned about proposals in recent months to amend the MFCMA in a manner which would require a mandatory time-certain phase-out of both directed and joint venture fishing. Our views on this subject are well known and we need not repeat them here. Instead, we are here to join with other industry groups including processors, factory trawlers, longliners and smaller vessel operators to support a more rational "Americanization" position as agreed to in Seattle last May. It is this broad-based industry coalition, primarily from the Pacific Northwest and Alaska, which provided the genesis for S. 1386, one of the bills before the Committee today. We believe, that if certain ambiguities in the text of this bill are appropriately clarified, this legislation will represent a faithful restatement of the industry consensus reached in Seattle. We applaud Senator Gorton and Senator Stevens in their efforts to bring about a compromise proposal.

The principal components of the Industry Coalition Compromise Agreement reached in Seattle in May are:

1. Graduated phase-out of directed foreign fishing to occur beginning in 1986 and to be completed by December 31, 1989 unless extended on a country-specific basis to no later than January 1, 1995 under a bilateral international fisheries agreement (BIFA).

2. A residual foreign directed fishing level not to exceed 65,000 metric tons per nation by council region to be maintained upon government/council recommendation that it will facilitate Americanization process.

3. BIFA negotiations to be conducted by U.S. government representatives and a Council-nominated team of processors and fisherman; negotiated benefits to U.S. industry to include purchase of U.S. processed products, participation in equity joint ventures, investment of U.S. monies and technology in U.S. companies and expansion of over-the-side joint ventures.

4. The 1986 directed fishery allocation reduction for any nation with allocations greater than 65,000 MT would be 40% of the 1985 allocation with lesser percentage reductions in subsequent years depending on BIFA terms. Reductions to residual levels to occur by December 31, 1989 unless extended under BIFA, but then no later than January 1, 1985.

5. Aggregate TALFF reductions from phase-out to be placed in reserves as follows: for Pacific pollock, 60% of reductions for domestic processors, 40% for joint ventures; for all other species, 40% of reductions for domestic processors, 60% for joint ventures.

6. Reserve amounts to be cumulative, i.e. each year reserve amounts would increase over previous year; reserves could be utilized by respective industry sectors. Joint ventures allowed to increase as long as there is a TALFF; joint ventures would not be allowed to tap processor reserves.

7. At the end of the phase-out period, the progress of Americanization would be reviewed with the intent of not allowing fish to go unused over an extended period.

As I mentioned a moment ago, we would not be here to support any of the bills before the Committee if we were narrowly looking after our own interests. However our business is fishing and we would much prefer to spend our energy and money pursuing that business rather than fighting a fishery civil war. In order to put an end to the divisiveness that self-serving, extreme positions have brought to our industry, we are ready to recognize and to work with other interests to develop and support reasonable compromises. It was in that spirit that the original Industry Coalition Compromise Agreement was developed and it is in that same spirit that we support it here today.

The need for clarification: Our testimony today is directed primarily to the proposed phase-out amendments contained in Senator Gorton's bill, S. 1386, and the recently proposed amendment to Senator Stevens' bill, S. 1245. These are the provisions of greatest concern to us and, we believe, to much of the fishing industry, particularly in the Pacific Northwest.

Our comments are intended to seek clarification of how both S. 1386 and S. 1245 would affect not only our operations, but more generally as to how such a new system would work, what its impact would be on the overall industry and how accurately it reflects the industry Coalition Compromise Agreement reached in Seattle in May. It is clear that the legislation represents a very significant change in the U.S. policy of developing the fisheries resources in our EEZ. Our concern is in providing some measure of certainty with respect to the long-term U.S.-policy toward foreign fishing that will enable us to go about the business of fishing.

Turning to the legislation itself, the recent amendment to S. 1245 and the major portion of S. 1386 involve a total revision of Section 201(d) of the MFCMA. 16 U.S.C. § 1821(d). A serious difficulty with both bills is the confusion between what is meant by the total allowable level of foreign fishing (TALFF) and allocations to individual foreign nations. As presently drafted, both bills eliminate the definition of TALFF and simply base TALFF on the 1985 calendar year allocations to individual nations. While this may be workable for certain countries which presently have an allocation, it leaves unclear the basic meaning of TALFF particularly for fisheries not covered by the respective bills, i.e., for S. 1386 all nations with no allocation or allocations of less than 65,000 MT and for S. 1245 any nation fishing within the EEZ but outside of the jurisdiction of the North Pacific Fishery Management Council.

Under present law, TALFF is defined with respect to any United States fishery as "the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States". 16 U.S.C. § 1821(d)(F)(2-4). By eliminating this definition and by addressing TALFF only in terms of "any nation which is permitted" S. 1386 appears to refer only to present individual country allocations, not the overall TALFF. Under present law there can, of course, be a TALFF determination without an allocation. Similarly, S. 1245 makes no effort to define TALFF and simply refers to foreign fishing allocations. Both S. 1245 and S. 1386 leave unclear the intent of, and the statutory authority for, the basic TALFF determination. This ambiguity raises serious concerns with respect to the application of these provisions and the potential for what we believe to be unintended results.

S. 1386 could conceivably be read to eliminate any allocations of TALFF to any nation having a 1985 allocation of less than 65,000 MT. Similarly, S. 1245 could be read to eliminate TALFF in all regions other than the North Pacific.

Another concern is the status of new entrants. We understand, for example, that a Governing International Fisheries Agreement with the Peoples Republic of China is scheduled to be signed later this week. Without a statutory definition of TALFF and with no allocations for 1985, what then is the possible allocation status of the PRC or any other potential new entrant under either bill?

The apparent exclusion in S. 1386 of any nation which has a 1985 allocation of less than 65,000 MT per council's geographical area raises a further question with respect to that bill's proposed bilateral international fisheries agreement option. The opportunity to enter into such a bilateral agreement is limited to those nations which have 1985 allocations equal to or greater than 65,000 MT. Is there a reason to exclude countries with lesser allocations? Why not offer these countries the opportunity to provide benefits to the U.S. industry in exchange for an increase in allocations, to the extent, of course, that TALFF is available?

Perhaps the area most in need of clarification is the process by which reductions in TALFF are allocated to processor and joint venture reserves. Both bills contemplate dividing all TALFF allocation reductions between the two reserve categories. S. 1386 mandates an equal division except for reductions in Pollock allocations which are to be split 60% to processors, 40% to joint ventures. On the other hand, S. 1245 requires the 60%/40% split, regardless of species. We support the original industry adopted compromise of 60% to processors, 40% to joint ventures for pollock and 40%/60% for all other species. This best recognizes the realities of the species specific development goals as articulated by the U.S. processing industry.

Furthermore, each reserve category is available only to that identified sector of the industry. Joint ventures are defined in terms of United States fishing vessels delivering to foreign processors. In order to avoid any misunderstanding we would recommend conforming the term "United States fishing vessels" to the term used throughout the MFCMA, *i.e.*, "vessel of the United States." This term has a particular meaning within the vessel documentation laws, and incorporates very specific U.S.-citizen ownership requirements. The term "United States fish processors," on the other hand is defined under the MFCMA to mean: Facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption. 16 U.S.C. §§ 1802(25)

There are no ownership requirements for non-vessel processing operations imposed under this definition. Apparently the fish processing facilities need not be owned by a U.S. citizen or even a U.S. shell corporation, let alone a corporation owned or controlled by U.S. citizens. We would encourage the Committee to explore whether this definition should be modified to better insure the true Americanization of our fishery resources.

With respect to the individual reserve categories S. 1386 provides that they are to "continually accumulate" and S. 1245 states that they are to accumulate "for a three year period." In both cases such allocations are to remain in the reserves until utilized by the appropriate sectors of the industry. It is not clear how the accumulation of reserves would in fact work under the language of these provisions. Our understanding of the industry compromise agreement was that the characterization of reserve amounts as "cumulative" meant that the base amount in each reserve category would increase each year by an amount equal to the TALFF allocation reductions multiplied by the appropriate joint venture and processor percentages, whether such reserves were actually utilized or not. Both bills state, however, that the accumulation is to occur "if such reserves are not utilized," thus implying that if the reserves are utilized there will be no accumulation from year to year. This would appear to reward performance by joint ventures and by processors alike with a reduction in available resource, an outcome which is both illogical and at odds with other provisions of the legislation.

Another uncertainty concerns the relationship between allocation reductions required to be made under the Packwood/Magnuson amendment for nations violating the International Convention for the Regulation of Whaling and allocation reductions required under the bill's proposed phase-out concept. Should, for example, the U.S./Japan agreement on this issue not be held by the Court of Appeals and a 50% reduction in the Japanese allocation be required in 1985, would the allocation compromise for the 1985 base year be the originally contemplated allocation or the 50% reduction? Our understanding of the Industry Coalition Compromise Agreement is that reductions would be based on allocation levels contemplated at the beginning of 1985. However, if it is assumed that the initial 40% reduction over the base year proposed in the legislation is calculated as a factor of the remaining 50% after the

certification reduction, how then is the other 50% of the allocation treated with respect to the reserve categories? Is it split between joint venture and processor reserves, or is it made available as TALFF for allocation to other countries?

We are also concerned with the manner in which S. 1386 treats joint ventures and processors should the growth of either sector exceed the amounts placed in their respective reserve categories. Paragraph 4(E) of S. 1386 begins by contemplating growth beyond the reserve amounts for both sectors in which case the existing MFCMA preference system would govern, but then provides a specific exception precluding joint venture growth beyond the reserve amount. This suggests an absolute cap on joint venture increases at no more than the amount in reserve, regardless of whether there is available TALFF. This is not our understanding of the substance of the Industry Coalition Compromise Agreement. We understand the intended limitation on joint ventures to be only a restriction against depleting processor reserves, not against utilizing available TALFF under the existing preferences of the MFCMA. There should be no cap on joint venture operations as long as any TALFF exists.

Finally, by referring to an overall increase in joint venture fishing this provision assumes a base amount which is presumably the 1985 JVP. It is essential that this be clearly stated so that joint ventures do not suffer an immediate reduction in present operations should this provision be enacted. In other words, JVP in the future is intended to be at a minimum what it was in 1985 plus the amounts added annually to the joint venture reserves.

We also would suggest two relatively minor technical corrections to S. 1386. The first is to refer to the tonnage thresholds in the legislation as metric tons and not simply tons in order to avoid potential confusion as to the appropriate measurement. Secondly, on page 3, line 14 the reference to total allowable level of foreign fishing should be preceded with the clarifying language "allocation for that nation of." This would avoid the implication that bilateral agreements with an individual nation could have a direct affect on the specific allocations made to another nation.

Our final comment with respect to the phase-out proposals is the need to clarify in the record of this hearing and in any Committee reports and floor statements, the agreement reached in the industry coalition meetings that the progress of Americanization will be reviewed at the end of the phase-out period with the intent of not allowing fish to go unused for an extended period.

In closing we would like to comment briefly with respect to two other provisions of the bills before the Committee. Section 8 of S. 1245 requires an annual 50% increase in foreign fishing fees over the cost of carrying out the provisions of the Act. This would have the predictable effect of making foreign fishing prohibitively expensive in very short order thus eliminating foreign fishing well before the phase-out dates in either bill. We do not support this indirect and arbitrary mechanism for achieving phase-out. Finally we strongly support the proposed modification contained in S. 1386 which would amend the so-called "basket clause" to require that matters considered by the Secretary of State in the allocation decision be *fishery* matters.

CONCLUSION

To briefly summarize, we prefer a straight reauthorization of the MFCMA. We believe that the system is working well and does not need to be changed. But if substantive amendments are to be made and if S. 1368 is clarified as discussed above, we would support it over the other proposals before the Committee because it is the most accurate reflection of the Industry Coalition Compromise Agreement reached in Seattle earlier this year.

This concludes my prepared remarks. I appreciate this opportunity to appear before you to make these comments and would be happy to answer any questions.

Senator GORTON. Thank you very much. Fascinating testimony. Mr. Evans.

Mr. EVANS. Thank you, Mr. Chairman. I will simply highlight my written testimony which was submitted. I represent the Alaska Factory Trawlers Association, which is a newly formed group, comprised of fishermen turned processors.

In the developing of bottomfish fishery off Alaska, we operate 11 factory trawling vessels, and we anticipate that in 1985 we will be harvesting approximately 125,000 metric tons of bottomfish, pri-

marily Pacific cod, Alaska pollock, and a broad range of the multispecies groundfish complex which is off of Alaska.

We are here to support S. 1386 which we believe comes very close to embodying the compromise that was struck by the participants of the negotiations. We support it. Of course, as with the other members, the other people at the table here, it was not our original position, but we feel that it is a compromise which can advance the processing segment of the fishing industry, and we would like to give it a chance to work.

We are looking for phaseout and we are doing this because we have come to the conclusion that the fish and chips policy, as it applies to the processing sector of the industry, has not worked. We have seen allocations, significant allocations of groundfish go to foreign interests; yet the factory trawlers, for instance, hold significant inventories of processed pollock, which we find very difficult to market to these foreign countries as an interim step in the development of the U.S. market for processed pollock.

So we have come to the conclusion at this time that we need these voids which this legislation will create, to provide the impetus for U.S. processor development. We face significant difficulties in getting our product into foreign markets and we also face the aspect of importation of fish which was caught in the U.S. zone, processed in a foreign country, and then going into the American market. And we feel that the voids, the reduction of availability of groundfish raw materials to these foreign countries will provide the necessary impetus to bring the financial support into the processing industry and get the U.S. groundfish processing industry underway.

This legislation perpetuates and even increases the amount of foreign factory processing vessels which will be processing U.S. American groundfish. However, we feel that even though it does this—and, of course, these vessels are direct competitors—the market voids that this legislation offers will justify that negative aspect of the legislation for us.

We do have some concerns. We would like to make a few comments on the legislation as it reads. We believe it does maintain the processor preference which presently exists in the act. We hope that it would and that the Congress and the parties here would support that.

We note that the phaseout applies to only two nations, as the present legislation reads, and it leaves us with some concern about how the policies would be implemented toward nations not affected by this phaseout legislation.

Third, the bilaterals that are referenced in the legislation allows for essentially the restoration of TALFF's that are removed through the phaseout, and we would hope that there would be some intent to constrain the negotiating authority in the bilaterals to at least preserve the reduction in TALFF that we had achieved through the 1986 reductions.

We think the Magnuson Act has worked well. We have seen definite strides by the harvesting segment of the industry. We feel that the progress that the factory trawler fleet has made is significant.

Our industry is on the line, and we think that the slight modifications that this phaseout legislation offers can help the industry as a whole to Americanize the fishery, and we therefore support it.

[The statement follows:]

STATEMENT OF EDWARD D. EVANS, THE ALASKA FACTORY TRAWLER ASSOCIATION

The Alaska Factory Trawler Association thanks the Committee for this opportunity to present our views on the reauthorization of the Magnuson Act. The members of this organization are individuals with a tradition of pioneering the Alaska fisheries, and individuals who took to heart the stated purpose of the Act "to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottomfish off Alaska." AFTA deeply appreciates the efforts of Senators Stevens and Gorton to introduce legislation which can aid the U.S. fishing industry by phasing out foreign fishing in our 200 mile economic zone.

AFTA was formed only a few months ago in recognition of the fact that the activities of the individual companies which are presently committing large sums of capital to develop Bering Sea and Gulf of Alaska were going unnoticed. The rumor was that the U.S. processing industry was doing nothing to boost itself into a position to displace foreign effort. Well, AFTA members are doing just that. Just as joint venture fishermen are making incredible advances in the displacement of the foreign directed fishery, AFTA members are presently operating 11 modern trawling vessels in the Bering Sea and Gulf of Alaska with the intent to displace the tremendous foreign fishing and processing effort which currently exists off Alaska. These fishing/processing vessels, averaging 160 feet in length, are trawling for Pacific cod, pollock and other species in the multi-species groundfish complex. The fish are delivered directly to the factories aboard the vessels where American crews operate high speed computerized processing lines which flash freeze the highest quality whitefish fillets within five hours of catching. Clearly freezing at sea offers the mobility and proximity between the resource and processing facilities to efficiently produce quality bottomfish. You will recall that in the late 70's a major concern of U.S. processor participation in the Alaska bottomfish industry was quality. The emerging factory trawler fleet has laid that concern to rest. Any impartial observer will attest that this whitefish is of the highest quality.

To date, the U.S. factory trawler fleet has received no benefit from the so-called fish and chips policy of the Magnuson Act. At the same time, we have seen the presence of foreign factory ships receiving fish from U.S. fishing vessels increase geometrically. We have seen raw fish supplies from waters off Alaska increase to foreign factory ships since 1976, not decrease as intended by the MFCMA. Within the past few weeks, the Japanese were allocated tremendous quantities of groundfish off Alaska while the U.S. factory trawlers are sitting on inventories of pollock fillets. Given this situation, we are now, out of economic necessity, seeking the help of Congress in claiming the U.S. resource for the whole of the U.S. fishing industry.

AFTA members have the present capacity to process in excess of 200,000 metric tons of Alaska bottomfish. We have committed $100 million in capital to developing bottomfish off Alaska. We presently employ 800 fishermen and processors. We are producing product valued at $80 million annually. A 2.3 multiplier suggests that our contribution to the nations GNP is $184 million, not including the capitalization of our vessels. That is to say, our 11 boats are contributing to our economy roughly an equivalent amount to what the 125 joint venture vessels contribute—a very telling statement of the potential of the expanding processing sector for Alaska bottomfish. And when U.S. dollars go to foreign countries to repurchase the foreign processed product, one can readily understand the negative impact on our balance of payments. U.S. factory ships will succeed or not succeed depending on government policies over the next five years. As managers of the resource under the principles enunciated by the Magnuson Act we are asking the government to acknowledge our existence, and to make special effort to understand the impact on our viability that the fish allocation process has.

The lag experienced by processors in getting operations for bottomfish underway has caused significant critical comment. The processors were, in a sense, blamed for their inability to compete with the foreign processors, while the institutionalized disparity in costs of operation between domestic and foreign processors were well understood. The message seemed to be, in spite of the obvious competitive difficulties, demonstrate performance before you seek aid by allocations.

We think the $100,000,000 capital investment and harvests of 125,000 metric tons by Alaska Factory Trawler Association members in 1985 is performance enough to make a case that we are in this for the long haul. Now having made the commitment to the development of bottomfish off Alaska, we suffer from the foreign competition described above. We suffer from the unavailability of foreign markets and imports of these "valuable and renewable resources" of the United States which have been caught and/or processed in American waters by foreign interests. With our money on the line, our testimony today is that use of the allocative process which already exists in the Act could foster our industry so that we can "realize the full potential of the Nation's fishery resources." However, today the allocative process is not being used to help us. The track record has been to apply "fish and chips" to foster the joint venture fisheries but not the domestic processing industry. One must ask on reviewing this record whether the means has, in fact, become the end.

The initial fostering of joint ventures through "fish and chips" can be viewed as a positive development for the American fishing industry. Clearly, in reviewing the list of possible benefits to be offered to the American side in exchange for a directed fishery, foreign interests might be expected to offer the JV chip before others, such as purchasing U.S. processed product. It offers the foreign nation the opportunity to use its capital equipment and its labor, whereas purchases of processed product would not. We understand that these joint ventures have become profitable for the foreign interests. So at this point it would appear that foreign interests are sacrificing nothing to obtain directed fisheries under the fish and chips policy. Clearly, so long as foreign interests are able to obtain directed fisheries in exchange for stationing a factory ship in U.S. waters to buy fish from U.S. fishermen at low prices, this is what they will do. There will be a great reluctance to purchase species which they can obtain through this method from U.S. processors. Thus AFTA members are skeptical of fish and chips as a method of boosting the U.S. processing industry to a profitable position in the face of this foreign competition.

S. 1386 reflects a compromise of the major segments of the Northwest fishing industry. The concept works only partially toward AFTA's goal of Americanization of the groundfish processing industry. We commend all of the involved parties for this effort. The concept of a processor reserve which will accumulate for the purpose of allowing this segment of the industry to capitalize is essential for the independent development of the U.S. processing sector.

We are mindful that, if successful, the mechanism would leave approximately two-thirds of the Bering Sea/Gulf of Alaska resources in the hands of foreign processors. Clearly this is not our objective, nor do we believe it is the objective of any segment of the American industry. S. 1386 preserves the joint venture concept for a period during the developmental phase of the groundfish processing industry. We support the bill, with the emphasis that joint ventures should keep their status as interim developmental mechanisms and that the priorities in the "processor preference" amendment remain intact. We do not support, other than for purposes of this compromise, the perpetuation of foreign factory ships in the U.S. economic zone.

S. 1386 remarkably embodies most of the elements of the negotiated agreement of the Northwest industry. As with any complex negotiation certain items go unstated or become confused in the negotiation. We would therefore like to state our views on certain aspects of the bill. First, the priorities of the "processor preference" amendment should remain intact, retaining joint ventures in the status of interim developmental mechanisms. We would hope for a Congressional affirmation that NOAA, State Department and the councils facilitate the needs of domestic processors vis-a-vis foreign interests. Second, the bilaterals should be constrained by the mechanism established in the bill for phaseout. We would not support bilateral negotiating authority which could eliminate the phaseout mechanism or other negotiated aspects of this bill. While the industry has agreed to a system which could slow down phaseout, AFTA did not agree to negotiating flexibility which could eliminate the gains of this legislation. At a minimum, the 1986 reduction in TALFF should not be permitted to be negotiated away in the bilaterals.

Finally, application of the phaseout mechanism to only two nations leaves uncertainty regarding policies toward other nations. Conceivably, the gains of phaseout could be lost through allocation of TALFF to other nations.

The concept of creating voids for the U.S. harvesting sector to fill has worked well. Through this legislation, a void will now be established for the U.S. processing sector to fill. Although this is a more difficult concept because of the required capitilization and the foreign market competition, we know from experience that when the foreign industry is denied access to our resources that the markets become very good for us.

Everyone agrees that bottomfish off Alaska are resources belonging to the United States. However, less than 5% of the resource is being processed domestically. No other industry which we can think of would permit this kind of access to the raw materials belonging to this nation. The status quo clearly works to the detriment of this nation's stated goal of realizing the full potential of our fishery resources and it represents an incredible loss of employment and revenues to this nation.

In conclusion, we would like to advise this Committee that the facts have changed. The U.S. factory trawlers have made the investment. We are committed to the Alaska bottomfish fishery. The U.S. factory trawler's product, highest quality, flash frozen at sea whitefish is surpassed by none, even though we are in the embryonic stage of our development. We think the Magnuson Act has worked quite well to foster the U.S. fishing industry, but it does need to be tuned ever so slightly to allow the processing sector to realize the benefits which can be achieved through the allocative process. This concludes our statement.

Senator GORTON. Thank you.

Mr. Morgan.

Mr. MORGAN. Thank you, Mr. Chairman. I am Bob Morgan, president of the Pacific Seafood Processors Association. Our association represents approximately 85 percent of the domestically processed seafood in the Northwest and Alaska.

Everyone shares the goal of development of the fishery resources of the North Pacific for the benefit of as many Americans as possible. This was one of the reasons for passage of the MFCMA in 1976. And we know it is a goal shared by Senators Gorton and Stevens and the industry's other allies in the Senate and House.

It is also true that we have seen a good deal of progress on Americanization of this huge groundfish resource since 1976 and especially in the last 4 years. Most of this development has come in the harvesting sector through the expansion of joint ventures which have enabled a number of boats to continue working which might not otherwise have had markets.

In this sense, joint ventures should be considered a success.

In our view, though, it is now time to proceed to the next step in the Americanization process, which is to move from over-the-side sales to the export of finished products. Just as joint ventures were able to expand with the application of political pressure, so should the sale of processed product be expanded by the same method.

That is why we have called for a date certain termination of foreign fishing and processing. The major stumbling block to implementation of this proposal has proved to be the fear on the part of joint venture operators that they will be left without a market.

Although such an outcome is the exact opposite of what we intend, since one of the goals of Americanization is to provide a much larger and more diverse market for U.S. harvesters, it is apparent that we have been unsuccessful in convincing people of this fact.

We have therefore decided that in order to bring all segments of the industry together in pursuit of Americanization, we will support S. 1386 which provides for not only the continuation of joint ventures, but for their expansion.

In offering our support of S. 1386, it must be recognized that it is a very complicated proposal which is going to need additional refinement and clarification in order to be a workable, practical program for the future. This does not mean that we are going to propose major changes to the fundamental industry agreement which resulted in the bill being introduced. It does mean that we want to

make sure that the language of the final bill actually accomplishes what was agreed to.

In the years following enactment of the MFCMA, we found that several provisions were having unintended effects, some of which have had a major impact on the structure of the U.S. fishing industry. We want to take every precaution that similar surprises will not pop up once this legislation is implemented.

Let me now outline where our major concerns lie in regard to the proposal as written. We in PSPA have always felt that those closest to the fishery management problem are the ones best equipped to make rational and effective decisions. We are not saying that the managers in Washington, DC, do not have the best interests of the industry at heart as they make management decisions. But the fact remains that the people with the most complete knowledge of these issues are the people who are on the scene and who have a stake in the continued viability of these fisheries.

Similarly, we are concerned about leaving control of the bilateral negotiating process in the hands of Federal agencies. Ideally, we would like to see the bilateral agreements negotiated at the regional level, especially since the allocations in question exist solely in one region. If this is not possible, then we would like to have the legislation make it as clear as possible that the Federal agencies responsible for the negotiations should follow the recommendation of industry advisers.

In addition, we feel that the bilateral agreement should not cover more than 2 years at a time. With the rapid changes which will hopefully be taking place in these fisheries as Americanization proceeds, we would not want to get into a situation where the Federal Government has promised allocations to a foreign nation 4 or 5 years in advance.

We also want to make sure that once reductions in TALFF have been made, that they cannot be restored simply by administrative action. All TALFF reductions specified by Congress or negotiated in a bilateral agreement must be permanent cuts.

We also want to make sure that there will be a consistent downward trend in foreign fishery allocations during the period covered by this bill. The 40-percent cut called for in the first year is an excellent beginning, but it would be a shame if this were the only reduction made in TALFF during the life of the program.

Whoever ends up negotiating the bilateral agreement must be required to negotiate additional reductions in TALFF. The main purpose of this bill, after all, is to replace foreign harvesting and processing with American harvesting and processing. This cannot be accomplished if the negotiators agree to freeze TALFF at its 1986 level until the final termination date in 1994.

In addition to the issues that I have raised in the written testimony, I would like to point out these that concern me:

How nations signing new GIFA's will be treated. I do not understand that.

Clarification that no foreign nation's residual TALFF can ever be increased, and the question of how allocation reductions made during the fishing year will be treated, such as cuts made pursuant to the Packwood-Magnuson amendment.

These and other provisions of the bill which I have mentioned need clarification, perhaps through changes in legislative language and perhaps through detailed report language.

We are anxious to work with the committee and with other interested industry groups in providing this clarification. We would also like to again emphasize the importance of local control of the bilateral negotiating process, as well as the basic fishery management process provided by the MFCMA.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT F. MORGAN, PRESIDENT, PACIFIC SEAFOOD PROCESSORS ASSOCIATION

Good morning. I am Robert F. Morgan, President of the Pacific Seafood Processors Association. I greatly appreciate your giving the Association the opportunity to present its views on reauthorization of the Magnuson Act. The Act has been an integral part of the fisheries development which has occurred in the United States since 1976, and the changes which are made during the first session of the 99th Congress are certain to influence the pace at which this development continues.

I would like to take just a moment to describe the membership of the Pacific Seafood Processors Association. The companies which comprise PSPA operate primarily in Oregon, Washington and Alaska and produce a wide variety of seafood products including salmon, crab, shrimp, and a number of bottomfish species. When considered as a group, the members of PSPA produce approximately 85 percent of the seafood products which originate in the Northwest and Alaska. The purpose of the Association is to provide a forum for communication among the members on matters of common concern, and to provide input to state and federal decisionmakers on issues of interest to Association members.

PSPA's primary goal regarding the FCMA has been to achieve a date-certain phase out of foreign harvesting and processing within the U.S. fishery conservation zone. We are very pleased that most groups in the fishing industry have now come to the realization that establishment of a date-certain is necessary if we are to achieve Americanization of the resources of the 200 mile zone in a timely fashion. It is the issue of timeliness which has been one of our major points in this debate. At the moment, the U.S. economy is realizing only a very small gain from the vast resources of the North Pacific, especially our huge pollock stocks. This is because our current role in the fishery is mainly as a provider of raw material to foreign nations. Several nations, but primarily Japan, take large quantities of pollock and other species from the North Pacific each year. All the United States gets from these foreign fisheries is an insignificant poundage fee which is used to partially offset regulatory and enforcement costs. The only other benefit from the presence of foreign fishing nations in the North Pacific is that they are purchasing fish at sea from a small group of U.S. harvesters. U.S. fisherman get about four cents per pound for this fish. In the case of the Japanese, most of this fish is processed into surimi, a fish paste which is used to make a wide variety of high protein food products. The highest grade of surimi currently sells for about 62 cents per pound on the world market. The economic benefit to the U.S. would obviously be quite large if we were selling 62 cent per pound surimi to the foreigners instead of four cent per pound raw fish.

Whenever you point this out to someone you invariably get the question: Why don't U.S. companies take control of these resources and begin selling finished products in the U.S. and on the world market? The reason this has not happened is that U.S. companies face several obstacles to profitable penetration of the surimi market. These obstacles are: (1) Continued foreign access to U.S. fishery resources at extremely low cost; (2) Restricted foreign markets for U.S. processed fishery products (particularly in Japan) while the U.S. market remains open; and (3) Much higher capital and operating costs for U.S. companies wishing to get into the surimi business.

Between directed harvesting and over the side purchases, the Japanese currently take about 1.5 million tons of North Pacific groundfish annually. Their cost of obtaining this fish is somewhere around three cents per pound. As long as the Japanese are able to acquire this raw product at such a low cost they will be able to prevent, or at least greatly discourage, new entrants into the market. However, this

obstacle becomes even more severe when it is combined with the other barriers I mentioned.

The bulk of the world's existing surimi market is in Japan. The U.S. market is developing rapidly, but it is still just a small fraction of that in Japan. Therefore, in order for U.S. companies to successfully develop and market surimi products they need immediate access to the huge Japanese market. U.S. surimi development will remain limited until the artificial trade barriers which face us in Japan are eliminated.

It is true that we are beginning to see U.S./Japanese equity joint ventures in the fishing industry. Two business arrangements were recently finalized which call for the production and sale of about 50,000 tons round-weight of surimi by U.S. corporations. These contracts were signed as a result of the U.S./Japan industry-to-industry meetings of last December.

While we applaud this progress, two comments are in order. First, the contracts in no way guarantee that this U.S. produced surimi will be sold in Japan. In fact, it is quite likely that it will end up in the U.S. market. Although this is not a violation of the industry-to-industry agreement, neither does it represent progress in the very important area of eliminating Japanese trade barriers. We should continue to insist, as part of the fish and chips system, that Japan open its domestic market to sales of U.S. produced surimi and surimi products.

The second point to make is that these recently concluded equity joint ventures should in no way change our commitment to the full Americanization of the resources of the 200 mile zone as quickly as possible While we are all aware that the foreign nations which fish in the FCZ would like to continue their allocations for as long as possible, the fact remains that their continued access to our fishery resources is a major barrier to the full and timely domestic development of the FCA. We in PSPA urge the Congress and the Executive Branch to maintain a firm commitment to Americanization.

Another obstacle which U.S. processors face in trying to enter the surimi business is the fact that our operating costs are considerably higher than our foreign competitors. The difference is created by several factors, including the higher cost of capital, higher vessel construction costs, and higher processing plant operating cost due to U.S. environmental and labor laws.

Although U.S. interest rates have come down considerably over the past several years, they still remain high by historical standards. And they are extremely high when compared to the rates available to our foreign competitors, many of whom receive investment capital at subsidized rates.

Another significant problem is the cost of vessel construction. A U.S. built surimi catcher-processor currently runs about $24 million in a U.S. shipyard. This compares with about $8 million for the same vessel built overseas. U.S. vessel construction laws require us to build in the United States making our operations less competitive.

Lastly, there is a whole range of domestic laws which govern the operation of U.S. processors which do not apply to foreign fishing fleets. Most of these laws deal with U.S. labor requirements and environmental constraints.

We are faced with a dual problem: on the one hand the U.S. government provides foreign companies with a competitive advantage by virtually giving them the fishery resources in the Fishery Conservation Zone; and, on the other hand, U.S. laws build in much higher operating costs for U.S. fishing companies when compared to their foreign competitors. This duel problem leaves us in a situation where a potentially huge industry remains dormant.

Quite some time ago the members of PSPA came to the conclusion that the most certain way of triggering the prompt expansion by U.S. companies into the world groundfish market is deny foreign nations access to the resources in its raw form. We are convinced, and history tells us, that if the foreign nations who need and want this resource are denied access to it while it is still in the ocean, they will then be willing to purchase it in processed form. Recent examples of this are king crab, tanner crab and black cod. We are also convinced that once a date-certain has been legislated after which no foreign fishing will be allowed in the U.S. Fishery Conservation Zone that the investment capital required to develop the industry will became available. It will be made available not only by domestic sources, but by foreign sources as well since equity joint ventures and partnerships will be their least costly source of U.S. fishery resources. Such investment would complement the domestic sources of capital which would certainly become available once it became clear that U.S. fishery resources were being reserved solely for U.S. citizens.

The obvious controversy in this scenario is that joint venture operators feel threatened by the elimination of foreign fishing nations in the FCZ. Therefore, I

want to once again state as strongly as possible that our goal in proposing the data-certain termination of foreign harvesting and processing in the 200 mile zone was not the elimination of markets for U.S. fishermen. Our goal has always been to replace the foreigners so that we can have a fully Americanized industry where the greatest possible economic benefit will accrue to the United States. If U.S. processors weren't sincere about Americanization we wouldn't have spent as much time and effort as we have in negotiating with foreign nations and trying to influence U.S. policy on this issue. We want to be the ones to provide a market for U.S. fishermen in the North Pacific.

However, it is apparent that we have been unsuccessful in convincing people of this fact. We have therefore decided that in order to bring all segments of the industry together in pursuit of Americanization we will support S. 1386, which provides for not only the continuation of joint ventures, but for their expansion.

At this point I would like to congratulate the members of the Committee and their staffs for their dogged pursuit of a solution to this issue. We know all too well how politically difficult it is to come up with a solution acceptable to all sides. As is usual in politics, this proposal represents a compromise. S. 1386 is not everything we had hoped for, but it is certainly an improvement over the status quo and therefore represents progress.

In offering our support for S. 1386 it must be recognized that it is a very complicated proposal which is going to need additional refinement and clarification in order to be a workable, practical program for the future. This does not mean that we are going to propose major changes to the fundamental industry agreement which resulted in the bill being introduced. It does mean that we want to make sure that the language of the final bill actually accomplishes what was agreed to. In the years following enactment of the MFCMA we found that several provisions were having unintended effects, some of which have had a major impact on the structure of the U.S. fishing industry. We want to take every precaution that similar surprises will not pop up once this legislation is implemented.

Let me now outline where our major concerns lie in regard to the proposal as written.

We in PSPA have always felt that those closest to a fishery management problem are the ones best equipped to make rational and effective decisions. We are not saying that the managers in Washington, DC do not have the best interests of the industry at heart as they make management decisions, but the fact remains that the people with the most complete knowledge of these issues are the people who are on the scene and who have a stake in the continued viability of these fisheries. Similarly, we are concerned about leaving control of the bi-lateral negotiating process in the hands of federal agencies. Ideally, we would like to see the bi-lateral agreements negotiated at the regional level, especially since the allocations in question exist solely in one region. If this is not possible, then we would like to have the legislation make it as clear as possible that the federal agencies responsible for the negotiations should follow the recommendations of industry advisors.

In addition, we feel that the bi-lateral agreements should not cover more than 2 years at a time. With the rapid changes which will hopefully be taking place in these fisheries as Americanization proceeds we would not want to get into a situation where the federal government has promised allocations to a foreign nation 4 or 5 years in advance. We also want to make sure that once reductions in TALFF have been made, that they cannot be restored simply by administrative action. All TALFF reductions specified by Congress or negotiated in a bi-lateral agreement must be permanent cuts.

We also want to make sure that there will be a consistent downward trend in foreign fishery allocations during the period covered by this bill. The 40 percent called for the first year is an excellent beginning, but it would be a shame if this were the only reduction made in TALFF during the life of the program. Whoever ends up negotiating the bi-lateral agreement must be required to negotiate additional reductions in TALFF. The main purpose of this bill, after all, is to replace foreign harvesting and processing with American harvesting and processing. This cannot be accomplished if the negotiators agree to freeze TALFF at its 1986 level until the final termination date in 1994. Remember that section 1 of the bill provides for the termination of harvesting by the major foreign nations at the end of 1988, except for a residual allocation. This is the fundamental premise of the bill, and this requirement can only be avoided if the foreign nations in question negotiate agreements which, (and I quote) "provide benefits which both promote the development of the United States fishing industry and are of a magnitude sufficient to justify extending a nation's foreign fishing . . . ." It seems obvious to us that if the bi-lateral agree-

ments are really meeting this standard then foreign fishing allocations between 1986 and 1994 must decrease sharply.

On another point, we suggest that section (4) of the bill be amended to specify that reductions in TALFF of non-pollock species be divided by placing 40 percent in the processor reserve and 60 percent in the harvester reserve in keeping with the original agreement among industry representatives.

In addition to these issues there are several other points which we feel need to be clarified. These are: (1) how nations signing new GIFA's will be treated, (2) clarification that no foreign nation's residual TALFF can ever be increased, and (3) the question of how allocation reductions made during the fishing year will be treated (such as cuts made pursuant to the Packwood-Magnuson amendment).

These, and the other provisions of the bill which I've mentioned, need clarification, perhaps through changes in legislative language and perhaps through detailed report language. We are anxious to work with the Committee and with other interested industry groups in providing this clarification. We would also like to again emphasize the importance of local control of the bi-lateral negotiating process, as well as the basic fishery management process provided by the MFCMA.

Before I conclude, let me also say that we are very supportive of the proposed change in the basket clause. We in PSPA have felt for some time that it is imperative that the basket clause either be repealed or limited to fishery issues. We are glad to see that S. 1386 deals with this issue.

In closing, I want to thank the members of the Committee for the time and effort they have put into this issue. It is safe to say that the industry in the Northwest would never have been able to unify behind a single plan without Congressional encouragement and we appreciate this encouragement because the question of how to deal with foreign fishing is not an easy political issue. Let me also say that we are aware of the amount of work to be done before this legislation is finalized. We hope, however, that the traditional supporters of the fishing industry in the Senate and House will be able to come together in support of a consensus approach to the Americanization issue, just as we in the industry have come together in support of this proposal.

Thank you for the opportunity to testify.

Senator GORTON. Thank you, Mr. Morgan.

Dennis Petersen.

Mr. DENNIS PETERSEN. Thank you, Senator Gorton.

I had serious doubts over the period of the last 4 months whether you would see the group of people sitting here today before you, and here we are. And as far as I'm concerned, it was a large accomplishment.

I have to apologize to Senator Stevens in that my association, the North Pacific Fishing Vessels Owners' Association is in a state of flux right now with our former executive director having been lured away by PSPA. So, consequently, we were not geared up to make comments on both of these bills. I have been acting as the executive director of the association, and I have a business to run, as well as trying to keep this association with its head above the boards, so my one consideration was testimony, sitting down and getting our board of directors to come up with something that related to Senate bill S. 1386.

As I stated, I am the acting executive director of the North Pacific Fishing Vessel Owners' Association. I am also a fisherman and a vessel owner and the immediate past president of our association. Our group represents the ownership of roughly 120 large vessels who fish for king and tanner crab and, in the past 5 years, have engaged in joint venture trawling, all in the FCZ off Alaska.

Our membership is mostly from Washington State, but we have recently added members from Oregon and Alaska. Our underlying goal is to provide fishing opportunities for membership vessels and thus provide the ability to make a reasonable return on investment and a living wage for our crews.

Therefore, it is with sincere gratitude we are before you, giving testimony on amendments to the Magnuson Fishing Conservation Management Act that will so profoundly affect our ability to survive and take over and displace foreign fishing efforts in our FCZ and fulfill the dream that so many of us in this room have had for so many years.

Our association has been very closely linked with the issues at hand. In 1979, myself, along with three other individuals, testified before the House Merchant Marine and Fisheries Committee as regards the concept of joint venture fishing whereby our American vessels, with the help of foreign processors, could start utilizing what the act was designed to do; namely, provide American fishing interests with the ability to harvest and sell vast bottomfish resources off Alaska.

I remember we stopped by and had conversations with Senator Stevens and other various and sundry individuals, and I guess the growth has come about like Topsy, and we are very glad that it has. It has kept many of our vessels operating and has provided added capability for Alaskan vessels who would have been very seriously hurt in the king crab crash.

Our fishing industry is continually in a state of flux and we are forced to change, and that flux has taken place very rapidly. Right now, this bill—S. 1386—is a strong case in point. Through the initiative of the Highliners Association, a white paper was formalized and presented to the industry. Both the harvesters and processors seemed to have the next step of an Americanization process or phasein of our FCZ in a logical and well-thought-out formula. Over a period of approximately 4 to 5 months, meetings took place between the two segments of the industry and gave rise to the hopes that we could all make some concessions for a common goal—namely, a blueprint of phasing foreign fishing and processing in our waters.

General concepts are pretty well agreed upon, a common stance we have put forth for everybody's perusal. As expected, there are polarized stances. Fireworks took place, but when the shouting was over, the industry still—when the shouting was over, there were still a lot of problems. In other words, things had not been resolved.

Be that as it may, our association's board of directors has chosen to support the negotiated paper as put out on May 1 by the Harvester Processor Coalition, keeping in mind there are very definitely parts of it that are questionable, and we are mindful that any change in the status quo might have a downside to the harvester sectors.

I guess basically my main thing that I want to get across is that we have worked diligently and you have referenced that, Senator Gorton, to come up with something that we feel is in all of our best interests. There is a lot of downside to this, to us as harvesters. There are many people that would like to continue the status quo and have their Magnuson Act reauthorized for 2 years, and this concept was batted back and forth within our own association.

This concept was not only battled amongst the individual EZ's, but within my own organization because there is a lot of strong feeling. But we did come to the compromise, and that is the thing I

want to emphasize is that the major players, the mainline people are going to be developing that fishery up there, is what you see before you today and that for all practical purposes we have come together. We all have various concerns that we have, but basically we have come together and are supporting this.

Again, my sincere thanks, gentlemen, and may the next helping of Lutefisk come from American-caught and processed cod.

[The statement follows:]

STATEMENT OF DENNIS PETERSEN, NORTH PACIFIC FISHING VESSEL OWNERS' ASSOCIATION

Gentlemen, my name is Dennis Petersen. I am the Acting Executive Director of the North Pacific Fishing Vessel Owners' Association. I am also a fisherman and vessel owner and the immediate past president of our Association. Our group represents the ownership of roughly 120 "large" vessels who fish for king and tanner crab and in the past five years have engaged in Joint Venture Trawling all in the FCZ off Alaska. Our membership is mostly from Washington State, but we've recently added members from Oregon and Alaska. Our underlying goal is to provide fishing opportunities for the membership's vessels and thus provide the ability to make a reasonable return on investment and a living wage for our crews. Therefore, it is with sincere gratitude that we are before you giving testimony on Amendments to the Magnuson Fishery Conservation Management Act (MFCMA) that will so profoundly effect our ability to survive and in fact, take over and displace foreign fishing efforts in our FCZ and fulfill the dream so many in this room have held for years.

N.P.F.V.O.A. has been intricately linked with the issues at hand. In 1979, our Association testified before the House Merchant Marine and Fisheries Committee as regards the concept of joint venture fishing whereby our American vessels, with the help of foreign processors, could start utilizing what the Act was designed to do, namely provide American fishing interests with the ability to harvest and sell the vast bottomfish resources off Alaska. This new concept served a twofold purpose in that it took pressures off the dwindling king and tanner crab resources and also gave our American trawlers markets where there were none. At the same time there was considerable effort made against this new concept by the established processing interests, but to the relief of our harvesting sector the concept was seen acceptable as the step that would allow us to fulfill the promises of the MFCMA. The rest is history and today expansion of joint venture (J.V.) fishing has provided millions and millions of dollars to vessels that would have otherwise gone bankrupt. Today, there are approximately 125 vessels fishing bottomfish off Alaska and the Washington/Oregon/California coasts in joint ventures. Without these markets, I can assure you our Northwest "large" (80'-150') vessel fleet would be virtually bankrupt. Needless to say, we are very weary of anything that would upset the applecart.

However, as fishing is an industry that is continually in flux, we are forced to change with the times and adopt new and sometimes contradictory ideas. This Bill, S. 1386 is a case in point. Through the initiative of the Highliners Association a "White Paper" was formalized and presented to the industry, both harvesters and processors, that seemed to have the next step of the Americanization process, or phase-in, of our FCZ in a logical and well-thought-out formula. Over a period of approximately four months meetings took place between the two segments of the industry that gave rise to the hope that we could all make some concessions for the common goal, namely a blueprint to phasing out foreign fishing and processing in our waters. The general concepts were pretty well agreed upon and a common stance was put forth for everybody's perusal. As expected, these were polarized stances and when the shouting was over, the industry still saw lots of problems. Be that as it may, our Association's Board of Directors have chosen to support the negotiated paper as put out on May 1 by the harvester/processor coalition, keeping in mind there very definitely were parts of it that were questionable and we were mindful that any change in the status quo might have a downside to the harvester's sector.

As regards our specific comments on Senate Bill 1386 we support it as regards the final phase-out dates, the incremental approach of phase-out, and some form of a processor/harvester reserve system that would allow American processor interests to gear up and perhaps fill the void in the market place that the foreigners present-

ly enjoy. However, to this specific point of reserve being set aside indefinitely, we cannot agree. If, for example, the processor reserve builds to such a volume that in no way can they realistically process that "reserve" fish, rather than let it die, at some point we, as harvesters, would like to have the capability to catch and sell it to whoever might be willing to purchase it. Wasted fish is wasted fish and nobody benefits. One of the tenets of the MFCMA and our government is to not let that happen and we agree. Therefore, we feel that some mechanism must be included in this bill that would allow those unused fish with mathematics (DAP ability) being the guide, to be turned loose for us to harvest and sell.

In our copy of S. 1386 on page 2, Section D, we ask that the language be changed in line 14, to read "shall not exceed" rather than "thereafter may be as large as". We further would ask in line 15 of that section, starting with "but in no case . . ." that the remainder of the sentence be deleted. We feel that to do otherwise would "lock in" many of the present countrys and negate the possibilities of another major partner such as the People's Republic of China, from entering the, if you will, competition. Without the possibility of this new competition for J.V. fish and a minimum TALFF, we might otherwise be assuring present joint venture countrys, i.e., Japan and Korea, of being able to manipulate their J.V. operations to a larger extent than they do presently. Besides, competition should be an intregal part of what we are attempting with this amendment and in the long haul, it should be a positive for all segments of our industry, provided any new players agree upon the biliateral negotiations concept whereby the new country would provide benefits to American processors and harvesters alike.

Lastly, we ask that the language in section 4(A), line 12 be changed to read 60 percent reserve for harvesters and 40 percent for processors on species other than pollock. The 50/50 split is unrealistic for such species as Pacific hake, Atka mackerel and yellowfin sole where sheer economics play such an important role. We feel, and some processors agree, that within the time frame involved, there will be little chance of anywheres near the processing capability for these species coming on line, especially if the processor's thrust centers on pollock and surimi production as they have assured us. Should it prove otherwise, as an outside chance, the mechanism are already in place to deal with the eventuality, thus eliminating the need to codify such a large processor reserve for these marginal species.

In summarizing, Gentlemen, our association strongly urges you to put the extreme views you might hear in testimony today aside and give proper consideration to what we see as a compromise position. This Bill has been negotiated by some very competent people from mainline Northwest and Alaska fishing interests and is a milestone in that such diverse interests could come to an agreement on the basic elements of the Americanization phase-in. We still have some problems with the bill as my comments evidence, but recognize that without a cooperative effort, we all could suffer from a Congress that would do nothing. We feel the time is now and that our collective industry will benefit from this Bill being made into law.

We wish to thank Senator Gorton and surely his staff who have played such a major role in putting together this legislation. The realization of a complete and equitable Americanizatior of our fisheries resources has never been so close at hand. We urge you to vigorously pursue this legislation and to work with the parties who helped formulate its philosophy. If there are stumbling blocks or attempts to change the basic philosophy, we would have to take a long and hard look at our support for this amendment. What we are dealing with today has already been through all the hoops and ringers of the major players in the Northwest and Alaska fishing scene and any major changes would cause us heartburn and our support would probably be withdrawn.

Again, my sincere thanks, Gentlemen, and may your next helping of Lutefisk come from American caught and processed cod.

Senator GORTON. Thank you.

Mr. Fisher.

Mr. FISHER. Thank you, Senator Gorton, Senator Stevens, and staff for giving us the opportunity to testify here today. To me, this is deja vu. In 1977 and 1978, we came in and pleaded for the opportunity to go fishing in joint-venture, a mechanism or a medium that the framers of the act had not foreseen.

Well, we were allowed to go fishing. I was the first joint venture fisherman. From the start of a lonely 895 tons in 1978, this industry—if the joint ventures reach their targets this year—will har-

vest a little over 900,000 tons of fish in Alaska and the Pacific Northwest.

I quarrel with the value figures that were given earlier. My count is that it would be worth about $130 million. In fact, we are getting up close to—we are coming up to half a billion dollars in exports, new exports that we have given this country since 1978.

The deja vu bit. All during this time in 1978 we were told we could not do it, that our skills were obsolete, we did not know what we were talking about, we had little boats. The foreigners laughed at us and so forth and so on. They do not laugh anymore.

Again, the deja vu part comes when everybody from the councils to the Federal Government, State governments, so forth and so on have been telling the industry to get together, get a common position. And I think the same things were being said; we could not do that either. Well, we did do it.

I would like to confine my remarks to support for your bill, Senator Gorton, S. 1386. I think it is badly needed. Case in point. In 1978, we were told that all the whiting we could catch would be bought by domestic processors. In 1984, less than 1 percent of the OY of the quota of whiting was bought by domestic processors.

My boats are making money. I want to see processors make money, both shoreside processors and floater processors, and for this reason I think this compromise that we have come up with, as so many other people have testified, is a viable medium. Your bill does it.

I think also there is another reason for doing it. Much has been said about fish and chips. Fish and chips exist in the eyes of the perceivers. It is many things to many people. For example, I fish for Soviet joint ventures. I do not think there is any other group that have done any more to help Americanize the harvesting end of the fishery than have the Soviets. Yet, what is their allocations?

OK, you can claim other things are responsible for that, like Afghanistan and whatever—Sakharov. But yet, we see another nation—Poland—who is under the gun for a violation of human rights. Marshal law has been declared. Look at the difference in the allocations between two of them that are supposedly out of the same bad corral.

I do not think fish and chips is a consistent policy as it is currently practiced. Your bill, Senator Gorton, would go a long way toward making fish and chips consistent and, above all, to provide a definition, an actual working definition that can be used by the industry, by the Government, and by the councils.

It also, too, would, I think, help in another area. There are many groups playing allocations games now—various segments of the industry, the councils, NMFS, so forth and so on. I think your bill would go a long way toward helping to solve the allocation problem and, above all, I heartily concur with Mr. Morgan that when negotiation is done, under the premises of your bill with the foreigners, that the negotiators would have to take into account those people who know the most—the processors and fishermen.

I also would like to dwell on one final thing. We have got to achieve a climate of investment certainty. Very recently, I was attempting to secure financing for an American factory trawler. There is not an American bank that will talk to you—or would

talk to us. I can get the money overseas, but I cannot get it in this country. And the thing the bankers come home with again, again, and again is it is too chaotic, it is too uncertain, there are too many political factors.

I am an innovator. I was the first JV fisherman, as I said, in 1978, in the whiting fishery and then in the elephant sole fishery. I have been politically active—president of the Midwater Trawl Co-op, for whom my testimony is being given. I am a member of the Highliners. I am a director of the Fishermen's Marketing Association in Eureka, CA. I like fishing, I have made money at it, and I am a good fisherman. But I will not invest a dime in this industry. I have got enough cash to buy one or two boats right now. My boats have made money. I have been successful. I am not putting any money into this industry until something like your legislation goes through.

Thank you.

[The statement follows:]

STATEMENT OF R. BARRY FISHER, PRESIDENT, MIDWATER TRAVEL CORP.

This statement is one of commentary in support of your draft legislation to be submitted to the reauthorization of the F.C.M.A. of 1976 and attendant hearings to be held on July 23, 1985.

The Pacific Northwest fishermen have responded aggressively to the opportunities afforded us under the F.C.M.A. of 1976 and subsequent amendments.

I was the first fisherman to operate in the U.S.A. on joint ventures in 1978. As you know, the joint ventures proved the medium by which we have given the nation a new source of export income; by the completion of this year, we will have sold abroad close to half a billion dollars in export fish since 1978. I might add that the overwhelming majority of this fish are species that we have not been able to sell to shoreside American processors as there has been little or no demand for these species; Alaskan pollack, whiting, yellow fin sole and other flounders in the Gulf of Alaska and Bering Sea.

A pithy example of this last point can be seen in the whiting fishery off Oregon, Washington, and California. Processors testified in 1977 and 1978 that there was no need for joint ventures; they could buy all the fish (whiting) we could catch. In 1984 the American shoreside processors bought less than 1 percent of the OY (optimum yield, the amount of fish available to be taken in 1984). Without joint ventures, very little whiting would be caught.

To me, this fact alone negates the contention espoused by U.S.A. and other pro-processor groups that a simple phase-out of directed foreign fishing and joint venture will put the American shoreside processors into a competitive stance. They have had the same opportunities we fishermen have. By and large, the shoreside processors have chosen not to attempt to compete and enter the bottomfish game in Alaska and the Pacific Northwest.

Nevertheless, processors have benefitted from these new opportunities. A recently concluded study by Natural Resources Consultants attests to these benefits. I would refer you to the study.

The study succinctly demonstrates that the processors have indeed entered the bottomfish fishery. However, these processors, by and large, are not the traditional processors as represented by National Fishery Institute or Puget Sound Processors Association. Rather, they are a new breed; American factory trawlers and other new companies and also foreign firms who are increasing their investments in the industry as processors.

Given all the above, I believe the draft legislation to be introduced by you should be enacted for the following reasons:

1. The legislation squarely mandates a supply of fish for the shoreside processors. It will serve notice on them that either they get into the game or cease their obstructionist tactics and lobbying (I only wish that N.F.I. and P.S.P.A. devoted as much time, money, and effort to investment in the fishery as they do in P.R. and lobbying efforts to introduce non-competitive policies and regulations into the American fisheries).

2. Your proposed legislation is drawn from all segments of the Pacific Northwest fishing community; fishermen and processors. It doesn't totally satisfy any of us, yet the ideas in your legislation are a viable compromise agreed to by all of our associations. In my opinion, Sen. Stevens' bill is weaker and in allowing no further allocation to foreigners beyond 1989 does not offer any "carrot" to our foreign customers and partners to continue to purchase shore produced fish products as well as to continue to purchase joint venture fish. Your bill allows further allocation of direct fishing quotas to foreigners of surplus fish. These allocations would be awarded to foreigners who increase their purchases of both finished seafood products from American processors and joint ventures, and meet other pertinent criteria. In other words, your bill addresses itself to the "Fish and Chips" policy of the U.S. government and will make this policy work. The current "Fish and Chips" policy doesn't work. It is a policy that is secondary to a whole host of other priorities, and nowhere is that policy succinctly defined in a manner that can be consistently applied. Consider, for example, the allocation to the U.S.S.R. No other nation has contributed more to the "Americanization" of American groundfish fishery than the Soviets through their investment in Marine Resources Co. Int. and by their huge fish purchases of surplus fish product that does not come back into the U.S. market. Yet look at their allocations; the U.S.S.R. refused its quota this year because it was so insignificant; 11,000 metric tons.

3. Your legislation would constrain N.M.F.S. from playing its own independent allocation games. The user groups, fishermen and processors, would have a say based against relevant criteria in the award of quotas to those nations who do the most for our fisheries. It would end the parade of Western European countries to Alaska, encouraged by N.M.F.S. in attempting to purchase only codfish (always in short supply) and thereby hurting our industry in that scarce and much desired product is allocated away from our traditional Pacific Rim partners, Japan, Korea, the U.S.S.R., to nations that have no interest in developing our principal surplus species such as whiting, Alaskan Pollack, Atka Mackeral and soles. It makes no sense to have a government agency in the allocation game particularly when that agency is attempting to gain a market entrance into markets (the E.E.C.) where our product faces a 16 percent tariff. N.M.F.S. can better serve this fishing community in the Pacific NW and Alaska by fulfilling its role assigned by the F.C.M.A. of being the government's watchdog in the administration of the F.C.M.A.

4. It is very important to achieve a climate of investment certainty in this industry. Recognize full well that the fleet has now and will have far more capital invested than have or will the processors even under full Americanization. As said before, we fishermen invested heavily, with no such guarantees for ourselves as are contained in your legislation for processors. We took the risks to harvest under-utilized and non-utilized species in direct response to marketing opportunities for that fish. The vehicle was the joint ventures. The processors provided us with little in the way of markets. Other fishermen seized these same opportunities by involving themselves in shoreside processing plants and in building and operating factory trawler ships. If you combine the impact of all of these fishermen investments, the result will be almost a million metric tons of fish being taken in 1985 in the Pacific and North Pacific waters as a result of our efforts.

Your legislation will, I feel, bring the processors in. But one must remember that without legislation such as your propose, the industry will continue the chaos, uncertainty, and bad press it now dubiously enjoys. Further development will be very risky.

I am an innovator. I was the first J.V. fisherman in 1978. I helped plan and lead the initial joint venture for whiting. The same is true for the sole fishery in the Bering Sea. My vessel demonstrated the first highly successful commercial fishing using pelogic trawls for rockfish in the domestic American market. I have been politically active as an advisory panel member on both the Pacific Fishery Management Council (1977-1980) and the N. Pacific Fishery Management Council (1982 to present). I am a member of the Highliners, a Director of Fisherman's Marketing Coop, a member of the Coalition for Open Ocean Fisheries, and President of the MidWater Trawl Cooperative. My publications on practical commercial fishing gear and methods have been published in tens of thousands of copies by Oregon State University and by N. Pacific Fishery Mgt. Council.

I also have been and am a highly successful fisherman. My boats are paid for. I have enough cash today to purchase another vessel for cash. But I would not invest one dime today towards another vessel because of the current uncertainty as a result of political maneuvering gaining precedence over free market realities. Simply put, I believe we need concrete legal and political standards, workable fish-

ery legislation, and, above all, efforts to make current legislation work in some fashion related closely to what the framers of the F.C.M.A. of 1976 had in mind.

I believe the managers should be forced to adhere to the legislation rather than to state conceived programs (which exclude or work to exclude nonstate residents, for example), that the N.M.F.S. should be forced to carry out its role as government guardian to see that all of us adhere to the F.C.M.A. (and this includes N.M.F.S.), and to ascertain that no one group receive special privileges.

Finally, I hope N.F.I. and P.S.P.A. and U.S.A. will carry on "Americanization" of the fishing industry nationally so we can end the imports of raw, round fish, processed product such as fillet blocks, fresh and frozen fillets, etc., all of which have lessened and limited opportunities nationally for American fishermen. Much of this imported fish is directly and indirectly subsidized by foreign governments. N.F.I. and P.S.P.A. do not wave the flag in the name of overall "Americanization." Why?

Senator GORTON. Thank you very much.

Just a couple of really quick questions. This one—I am going to start with you, Mr. Evans, and I just want a "yes" or "no" from each of you across the line there.

Assuming we can clarify the details in S. 1386 so that it is totally consistent with the agreement you all reach, do you or your organizations support the passage of that bill this year?

Mr. EVANS. Senator Gorton, the Alaska Factory Trawlers would support the passage of the legislation.

Mr. LARKINS. Yes, sir.

Mr. RUDY PETERSEN. Yes.

Mr. DENNIS PETERSEN. Very definitely.

Mr. FISHER. Yes.

Mr. LEE ALVERSON Yes, sir.

Mr. BOB ALVERSON. Yes.

Senator GORTON. One of you, or maybe two of you, can you tell both me and Senator Stevens the extent to which in these negotiations you have talked to and worked with people from Alaska, people in the industry from Alaska, as well as in Washington and south?

Mr. LEE ALVERSON. Mr. Chairman, in the development of the White Paper for the Highliners Association, when the document was completed it was distributed widely, both in the Pacific Northwest and Alaska. When discussions were held in terms of coming up with some sort of compromise, ADA did come to some of the sessions that were involved.

During its development, I personally flew to talk to the major Alaskan groups that were involved in the offshore fisheries, the trawlers groups, and presented it to both Mr. Dyson and Mr. Burch and others, so they are acutely aware of the document and the progress.

I believe my son has discussed the development of some of these aspects with some of the longline groups in Alaska.

Senator STEVENS. Well, that is not really the question. How many Alaskans were in on preparing the original document?

Mr. LEE ALVERSON. Are you talking about the White Paper?

Senator STEVENS. Yes.

Mr. LEE ALVERSON. The White Paper was drafted—none of the people here at the front table were involved, except——

Senator STEVENS. Well, there was a consensus reached.

Mr. LEE ALVERSON. At the May 1 meeting which was held at the Harbor Club, Dave Harville was present at the session for ADA.

Senator GORTON. Lee, while I have got you there, can you estimate what full Americanization of North Pacific fisheries would mean in terms of additional numbers of American jobs and differences in our balance of trade?

Mr. LEE ALVERSON. I will make an estimate. I think it in part, depends on the manner in which that fishery develops. If it is factory trawlers, if it is shoreside operations, both will happen—in terms of value, I think we are looking at a number at the processor level somewhere between $3½ and $6 billion worth of production.

In terms of jobs, it is a little more difficult to estimate. There are about 1,000 to 1,500 new jobs in the past several years that relate to this industry. I think if we see the continued growth of the surimi and analog products, that we could be talking 10 to 15,000 new jobs at the end of this buildup.

Senator STEVENS. I note that our colleague wants to testify, too. Senator Murkowski is here now, and we are pleased to see him here.

I see no reason to get into an argument. My mind keeps going back to previous days. I remember the hearings that Senator Magnuson and I held at Western Washington State College where your part of the industry got former Ambassador McKernan to come in and oppose the 200-mile limit.

My memory is, as a matter of fact, that your part of the industry proposed joint ventures and came in and wanted an amendment for a processor preference. And you could have joint ventures all the time from the very beginning of the Magnuson Act.

Now, this is no time to really argue. Bob, you were in my office this year, asking me to put in the bill that I did draft and introduce. So, I think that there is a time now, that is a time for us to try and get back together. This is an industry that includes my State as well as yours. And none of you sitting there at the table have told me your part of the industry had changed your minds with regard to phasing our foreign fishing.

We will have a later time to talk about it. And I hope that you stay and listen to the others who are here in the room today.

Senator GORTON. Thank you all, gentlemen.

Senator STEVENS. Gentlemen, let me call Mr. Henry Mitchell, United Fishermen of Alaska; Richard Gutting, vice president, Government Relations, National Fisheries Institute; Alvin Burch, manager, Alaska Draggers Association; Ms. Lucy Sloan, executive director, National Federation of Fishermen; Mr. Norman Cohen, representing the Governor of Alaska; and Mr. Jim Campbell, the chairman of the North Pacific Fisheries Management Council.

And if you do not mind, since Senator Murkowski has just flown back from home, Mr. Chairman, if we could call on him to give his statement to begin this, and then we will swing into the statement of this panel No. 3.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I do appreciate the opportunity to testify before the committee on the reauthorization of the Magnuson Act. And, Senator Stevens, I want to acknowledge you for the many

years of work on behalf of the fishing industry, and particularly your efforts in the 1970's which led to the creation of the Fisheries Conservation and Management Act which extended our fisheries jurisdiction out to 200 miles.

The result of the Fisheries Conservation Management Act has been much improved management of the resource. In Alaska our fishing and processing industry has responded to this new management capability by finding innovative ways to recap the economic benefits from our fisheries resources.

There is no question in the past 9 years we have learned a great deal about the management of the resources within our 200-mile limit. We have also learned a lot about fisheries resources beyond the 200-mile limit.

You and I, Senator Stevens, have cosponsored an amendment to FCMA which would extend our management authority beyond 200 miles for those species of fish, pollock, and others, that are located both within the U.S. zone and beyond and adjacent to our zone. The necessity of this is obvious. We must be able to protect our resources from unregulated foreign fishing fleets which, under the current management regime, can fish pollock and other species outside the 200-mile limit with no restriction.

We, therefore, must extend our management authority to protect the resource as well as our industry.

With regard to salmon, the importance of this type of management application is obvious when we consider what has happened with our salmon industry. In 1976, we recognized the importance of managing our salmon resources in the areas beyond the 200-mile zone and declared our management authority.

As a consequence, we were able to negotiate an agreement with the Japanese which pushed their salmon fleets westward and, as a result, the Japanese interception of Bristol Bay salmon decreased 94 percent, and the number of chum salmon interceptions declined substantially.

So, it is obvious that in this case, we were successful in gaining more management control to the benefit of the health of the stock for our own salmon industry. But despite the gains that we have made, we still do not have complete control over who is fishing our anadromous salmon. And again, it is the health of the salmon resource and our fishing industry that will suffer.

Recent scientific evidence shows that even with the current United States-Japanese agreement, the Japanese are still taking significant numbers of salmon from central Alaska, as well as western Alaska. We also have photographs taken this month of what appear to be Japanese salmon gillnet boats fishing in waters where our salmon are known to be. Despite a treaty with Japan which forbids fishing in these area, these boats did fish.

I will have for the committee photographs that, while difficult to decipher because the identification numbers of the boats are covered up, still best interests indicate that those appear to be Japanese vessels.

Of course, Taiwan has been caught with salmon on board their squid boats in areas where they would not have been catching squid. This is not a new problem with Taiwan; it is one we have faced before in the last several years, and we have photos which I

will introduce to the committee that clearly identify the Taiwanese boats and their long-line gillnets.

So, it is obvious that our current high seas fishing agreements are not being honored. This year's chum salmon runs in western Alaska are not what they were hoped to be; yet, the year was anticipated to be a good year. We are still not able to manage our salmon resources because we do not control the high seas salmon fishery.

I intend to work with my colleagues, Senator Gorton and Senator Stevens, and others in the Senate to encourage the State Department to come up with a high sea fishing enforcement plan which will include boarding and inspection. I will also ask the Commerce Committee to amend FCMA so that foreign nations that are found guilty of high seas salmon violation will receive as much as an immediate 50 percent cut in their bottom fishery allocation. This is for those fishing within our 200-mile limit.

The ability of the State Department to use leverage currently has been very disappointing, but I think it is appropriate as we wake up to the significant loss of market share not just in our fishing industry, but throughout the American resource base as a whole.

I think these two measures to be directed will encourage better management of the high seas squid gillnet fishery that often catch our salmon, more incidentally than not, and with these two measures I intend to eventually work with you to see an end to the incidental take of U.S. salmon.

With regard to the directed high seas salmon fishery of Japan, in light of the evidence of illegal salmon fishing, in light of higher-than-expected catch of North American origin salmon under the treaty, the only workable solution to this problem is an end to all directed high seas salmon fishery. Once we have accomplished that, the problem with Taiwan and other nations will be eliminated.

With such a high migratory fish like salmon, it will be impossible to ever correctly identify which coastal fishery is being hurt by the high seas salmon fisheries. Correct biology management demands that salmon be managed at the river of origin and high sea salmon fishing is certainly directly contradictory to this principle.

I certainly commend the committee for the provisions to direct the Secretary of State to begin to negotiate an end to Japan's high seas salmon fishery under current treaty with the United States.

There is one other area that I would like to cover very briefly, Mr. Chairman. That is the issue of high seas gillnet fishing and the damage that the monofilament gillnets do the marine environment. There is evidence that the gillnets that are used in the high seas squid fishery and the salmon fishery, as well, are playing a devastating toll on marine mammals.

We suspect a decline of the fur seal population, which I have held a number of hearings on in the Foreign Relations Committee on that issue, is still up for consideration. I would suggest that the Commerce Committee conduct at an appropriate time, oversight hearings on the entire issue of the high seas gillnet fishery, with a view toward reducing the environmental damage that these nets cause. Can we examine and find ways to make sure that nets that break away do not continue to fish? Do we have the availability of

materials at modest cost that will break down and sink after long periods of immersion?

I think these matters are coming to a head as there is more environmental examination on these monofilament nets and their ability to continue to fish. And in my capacity as chairman of the East Asian and Pacific Subcommittee of the Foreign Relations, I think it is an appropriate area of oversight interest, since most of these nets are manufactured in the Pacific Rim countries.

Lastly, Mr. Chairman, with regard to date certain phaseout, it certainly has numerous merits, and under the current allocation process that we have been operating under for the past 9 years, we have achieved certainly a reasonable level of development in the U.S. seafood industry. Now, this allocation process has become extremely complex, and I think it is time to institute the date certain application. Our intent has never changed, but the means to achieve our objective to full Americanization of our fisheries resource has become confused and muddled and date certain phaseout is really the only way to get us back on track. I think it is time that these decisions be made, and in the interim the allocation process will continue to be a valuable tool for U.S. industry to use to leverage economic benefits from the foreign nations that want our fisheries resource.

I will look forward to discussing ways of clarifying the allocation criteria and the process at the convenience of the committee. I will wait until the committee has resolved this issue of date certain phaseout before discussing my ideas.

Thank you.

Senator STEVENS. Thank you very much, Senator Murkowski. I hope you can stay with us as long as your schedule permits.

Let me indicate the order for the testimony from this panel. First, let us call on Mr. Cohen, who represents the Governor of Alaska; then Mr. Gutting, vice president of Government relations of NFI; then Mr. Burch, manager, Alaska Draggers; then Lucy Sloan, executive director of the National Federation of Fishermen; then Jim Campbell, who is the chairman of the North Pacific Fisheries Management Council; and then Henry Mitchell, who is the representative of United Fishermen of Alaska.

If that is agreeable, as I understand it is, with the panel, that will is the way we will proceed. I think we ought to discuss how long we should go. I am prepared to stay through and finish the consideration of this panel, if we would not be able to get to the next panel until later.

The next panel, then, will convene again at 2 o'clock and stay here as long as the room is available to us. So thank you very much.

Norman, would you proceed for the Governor, please?

STATEMENTS OF NORMAN COHEN, REPRESENTING THE GOVERNOR OF ALASKA; RICHARD GUTTING, VICE PRESIDENT, GOVERNMENT RELATIONS, NATIONAL FISHERIES INSTITUTE; ALVIN R. BURCH, MANAGER, ALASKA DRAGGERS ASSOCIATION; LUCY SLOAN, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF FISHERMEN; JIM CAMPBELL, CHAIRMAN, NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL; AND HENRY MITCHELL, UNITED FISHERMEN OF ALASKA/BERING SEA FISHERMAN'S ASSOCIATION

Mr. COHEN. Thank you, Senator Stevens, Senator Gorton, Senator Murkowski. I would like to give a note of appreciation for Senator Murkowski's remarks on high seas fishing just now.

Thank you for the opportunity to appear before the committee today to present testimony on the proposed legislation to authorize the Magnuson Fishery Conservation and Management Act.

My name is Norman Cohen and I am here representing Gov. Bill Sheffield of Alaska. The State of Alaska is obviously very pleased with the issues raised by the proposed legislation, especially S. 1245. This bill deals directly and substantively with many of the major fishery issues which confront Alaska. Passage of this legislation in substantially its present form will, in our view, greatly benefit and enhance the fishing industry, including both the processing and harvesting sectors.

Two of the major issues raised in the proposed legislation concern the national policy for the phaseout of foreign fishing and the elimination of the interception of U.S. origin salmon on the high seas and within our Exclusive Economic Zone.

First, to the issue of phaseout: It is the view of the State of Alaska that this is the major issue presently confronting not only the Congress, but also the States and Regional Fishery Councils. The State believes that a time-certain phaseout of foreign fishing, coupled with a similar phaseout of joint ventures, will provide the most advantageous environment for the development of an Alaska-based, groundfish fishing industry.

We do have some suggestions which we would like the committee to consider in its further deliberations on this aspect of the legislation:

1. That provisions be made to include a phaseout of joint ventures in addition to the phaseout of directed foreign fishing;

2. That the phaseout ceilings be construed as ceilings for allocation by the Regional Councils among foreign nations.

3. That the Regional Councils be given the authority to allocate among joint-venture entities which would enable the Councils to favor those which provide the most benefit to the U.S. fishing industry; and

4. That the Secretary of State's authority to deviate from the phaseout schedule be limited to situations where the Councils recommend such deviations.

With these changes, we believe that a phaseout plan could provide substantial benefits to the Alaskan fishing industry.

The other major issue before us today concerns the elimination of the interception of U.S.-origin salmon on the high seas. Clearly, most of these interceptions impact salmon originating in Alaskan

waters. Evidence is also mounting that these interceptions are having a severe detrimental impact upon certain Alaskan salmon stocks. It is time for these interceptions to stop.

The Magnuson Act extends exclusive jurisdiction over anadromous species throughout their range, up to another nation's fishing zone. The United States should enforce this national policy and end this wasteful practice.

This year, there is a serious depletion of the chum salmon resources in western Alaska, primarily in the Kuskokwim River. The high seas fisheries are harvesting large numbers of chum salmon. There is also a loss to the inshore fishery of over 200,000 chinook salmon on an annual average. These losses are concentrated in areas where fishing income is low and where there is extreme competition for the salmon that make it back to our rivers.

Also, the Japanese high seas fisheries are believed to be harvesting as many coho salmon offshore as U.S. fishermen are harvesting inshore in affected areas of Alaska.

Coupled with the loss of marine birds and marine mammals, the time has come for the United States to eliminate these interceptions of State law. It is the initiative of S. 1245 to begin this process.

There are other aspects of the proposed legislation which I would like to touch on briefly as these also would have very positive benefits for the Alaskan fishing industry. The State supports extension of U.S. authority over straddling stocks. This is a logical extension of U.S. efforts to develop its offshore fishery resources. The extension of Alaska fishery management for crab species in the southeast is important, as it will bring consistency and rationality into a very complex geographical and political situation in southeast Alaska.

Likewise, dealing with the Federal intrusion into Cook Inlet will prevent future conflicts between State and Federal management if the Federal authorities are some day extended into this area.

The State is very supportive of the language which will provide for joint ventures in the territorial sea when they cannot be safely and practically conducted in internal waters. Certainly, the vagaries of the coastline should not prevent fishermen from obtaining markets for their catch, expecially in areas such as the Norton Scund region of Alaska where fishing incomes are so low.

The State also supports the provisions relating to the increase in foreign fishing fees, the removal of reference to the Law of the Sea, and the provisions concerning review of petitions by the U.S. Trade Representative.

In summary, the State of Alaska is very pleased with the direction taken by S. 1245 and supports its passage, with the few suggestions outlined in our testimony, and I would like to thank the committee for the opportunity to present this testimony and will be available to answer any questions which you may have.

Thank you.

[The statement follows:]

STATEMENT OF HON. BILL SHEFFIELD, GOVERNOR, STATE OF ALASKA

Mr. Chairman, thank you for this opportunity to provide testimony on S. 1245, S. 1386, S. 747, and other matters related to the reauthorization of the Magnuson Fish-

ery Conservation and Management Act (Magnuson Act or MFCMA). Having the longest coastline of any state in the nation, and having the great salmon, groundfish, and shellfish fisheries occuring in waters around and off our coast, the State of Alaska has a significant interest in the national policy to conserve, manage, and develop America's marine fisheries resources.

Of the many important issues that are raised by the reauthorization of the Magnuson Act, there are two which are fundamental to the continued viability of the fisheries and the fishing industry of Alaska. These are the method by which federal policy will mandate the phase-out of foreign participation in the harvesting and processing sectors of the U.S fishing industry, and the dedication of American efforts to end the interception of salmon of U.S. origin on the high seas by the foreign fisheries, primarily those of Japan. The other issues raised by the reauthorization are also important and will be considered in my testimony. However, it is clear that a well-enunciated federal policy on these two overriding issues will most directly affect the ability of the U.S. industry, including both processing and harvesting sectors, to fully reap the benefits of the valuable marine fishery resources of the North Pacific Ocean and Bering and Chukchi Seas.

PHASE-OUT OF FOREIGN PARTICIPATION IN THE UNITED STATES' EXCLUSIVE ECONOMIC ZONE

Traditionally, the State of Alaska's fisheries have focused primarily on the inshore and nearshore salmon fisheries and the Gulf of Alaska and Bering Sea shellfish fisheries. These fisheries provide employment and associated economic activity in both the harvesting and processing sectors, as well as in the other support industries. By contrast, the groundfish fisheries in the Gulf and the Bering Sea, are developing primarily through over-the-side joint ventures, with most activities by-passing U.S. processors and local communities. Although numerous Alaskan fishermen and joint venture firms, and some Alaska communities, benefit from these ventures, most of the fishing vessels are based out of state. In further, processing with its enhancement of product value is taking place offshore on foreign bottoms. For example, pollock sold by Alaskan fishermen to Japanese companies for 3.5 to 4 cents per pound is processed, reprocessed in Japan, and imported to the U.S. at more than $2.00 per pound, at a significant loss to U.S. employment and profit.

Consequently, the State's policy in regard to the developing groundfish fisheries is to create an atmosphere wherein as much economic activity as possible occurs in Alaska with maximum benefit to local fisheries dependent communities. This includes not only the harvesting sector, but the processing and support sectors as well. In light of this general policy, the State believes that a swift phase-out of both foreign fishing and joint ventures will create the most advantageous environment for the development of an Alaskan-based groundfish harvesting and processing industry. Clearly, this is not intended to create conflicts or discriminate against any segment of the U.S. industry. Rather, this proposal is a recognition that only by creating a link between the tremendous resources off our coast and the Alaskan industry, will the United States be able to take full advantage of the opportunities that the phase-out of foreign fishing provides.

Further, it is our view that the continuation of joint ventures into the foreseeable future, even with the phase-out of directed foreign fishing, will create a situation where a shore-based processing and support industry does not develop to its full potential. This is based upon our view that under current circumstances, the foreign processing vessels at sea have a tremendous competitive advantage over shoreside facilities. Although, in the future, these facilities will have to be competitive on the world market, they are simply unable to do so at this time without a Congressionally-mandated phase-out of joint ventures, as well as a phase-out of the directed foreign catch.

As for timing, the State believes that the shortest number of years that can be attained for the phase-out should be adopted. It is our view that a time-certain phase-out will help to ensure an investment in the development of an Alaskan-based fishing economy. Our review of the proposed legislation before the committee today has revealed a preference for the general approach taken in S. 1245. However, it is the view of the State of Alaska that the reduction in the total allowable level of foreign fishing be seen as a ceiling within which it is up to the councils to determine the method for allocation among nations. These determinations should be based on the cooperation which foreign nations provide to the United States fishing industry. Such authority in the councils should also extend to allocations to specific joint venture companies which are particularly cooperative in the development of the U.S.

industry. Currently, if is not possible to make such allocations, based upon the view of the National Marine Fisheries Service.

The State also supports the provision in S. 1245 which provides authority in the Secretary of State to deviate from the phase-out schedule. However, we believe that this should only be done upon the recommendation of the councils. It is the members of the regional councils who are most aware of the needs of the U.S. fishing industry and who should be relied upon to make those determinations which would justify deviations from the phase-out provisions.

HIGH SEAS SALMON INTERCEPTIONS

In Section 3 of S. 1245, the Secretary of State is directed to begin negotiations with the Governments of Canada and Japan within the framework of the International North Pacific Fisheries Commission (INPFC) to eliminate the interception of salmon of United States origin. Also, in Section 4, the bill calls for the initiation of forums for the exchange of scientific information among all nations that have a significant interest in the marine fisheries issues of the North Pacific Ocean. These two sections of S. 1245 address major policy questions concerning the marine resources of the North Pacific Ocean over the next decade.

The proliferation of high seas gill net fisheries poses some of the most serious resource conservation and allocation problems in the North Pacific marine environment. Not only are these fisheries conducted upon mixed stock salmon species, but they also are conducted on stocks of both Asian and North American origin. The legal theory that the state of origin has exclusive management authority over anadromous species which spawn in its waters is codified in the Magnuson Act, and is recognized by the domestic legislation of the other North Pacific states. Yet, these high seas fisheries have not only been allowed to continue under the guise of the INPFC, but also have been allowed to develop further through the squid gill net fisheries of Japan, Taiwan, and Korea.

As more research is conducted, the problems caused by the high seas fisheries become even more evident. It is now estimated that an annual average of at least 100,000 chinook salmon of western Alaskan origin and another 100,000 chinook of central Alaskan origin are harvested in the Japanese high seas fisheries. In addition, the catch of coho salmon of western Alaskan origin is believed to be as high as the inshore western Alaskan catch.

Total interceptions of all salmon and steelhead of North American origin are estimated to be over 1,000,000 fish per year. Considering dead loss of fish dropping out of the nets uncounted and the fact that much of the harvest is of immatures at much smaller size than they would be when they return inshore, the economic loss to Alaskan fishermen is probably over $20,000,000 annually.

Where resource conservation problems exist, such as the fall chum run up the Yukon River, or intense allocation competition problems exist between recreational and commercial users, such as for specific stocks of chinook salmon returning to the Cook Inlet region of southcentral Alaska, these situations cannot be fully addressed when a high seas mixed stock fishery is being conducted on these stocks. Further, the economic loss to the inshore fishermen, whether commercial, subsistence, or recreational, is unacceptable considering the United States' policy that domestic fishermen are to benefit from stocks originating in U.S. waters.

In addition to the conservation and allocation concerns raised by these high seas fisheries in regard to their harvest of salmon, such fisheries also are extremely destructive of other marine resources, like marine birds and mammals. The numbers of these animals destroyed by the high seas gill nets, both when fishing and when lost at sea, are staggering. Clearly, in order for a solution to be achieved, there must be an elimination of high seas fisheries and the establishment of a forum for interested nations to exchange information and to begin working cooperatively. Consequently, the direction in section 4 to begin this international consultation, which at this point is limited by the membership of the INPEC to only the U.S., Canada, and Japan, is a very forward-looking policy decision, which the State of Alaska fully supports.

MANAGEMENT AUTHORITY OVER STRADDLING STOCKS

Section 2 of S. 1245 extends United States exclusive management authority over straddling stocks, which are defined as stocks of associated species located within and in the area beyond the exclusive economic zone. The State supports this extension of the Magnuson Act's authority. The concept recognizes that the management of stocks only when within the U.S. zone ignores important considerations that must be taken into account outside the zone in order to conserve the resource. Adop-

tion of this amendment would enable the United States fishing industry to take full advantage of associated stocks of fish which are within our zone, because there will be authority over fishing activities by others of these same stocks which happen to be located outside of the zone, up to the boundaries of other nations' exclusive economic zones.

NEGOTIATIONS BY THE SECRETARY OF STATE

Section 3 of S. 1245 would require the Secretary of State to enter into negotiations with other nations interested in fishing within the U.S. zone for the purpose of recognizing U.S. authority over fishery resource, as defined within the Act. The purposes of this section are to require that such nations provide reciprocal fishing rights to U.S. fishing vessels, and to tie foreign allocations to the shoreside services used by such nations. The State supports these provision. On the other hand, the State does not support the provision in S. 1386 which would create industry advisory committees to assist the Secretary of State in bilateral negotiations. If any body is the proper one for such a role, it would be the regional councils, rather than an industry-only group.

With regard to the recognition of U.S. authority, this would confirm, for purposes of international law, that the foreign nation will comply with the mandates of U.S. law and regulation as it applies to fisheries within the U.S. zone, as well as for anadromous fish of U.S. origin wherever they migrate (outside of another nation's zone). The reciprocal fishing provision recognizes the incongruity of having the U.S. allow foreign vessels to fish or process in our waters when our vessels are prohibited from these activities in the waters of foreign nations. Clearly, it is in the best interests of our fishermen to provide them with the same opportunities that other nations' fishermen are provided under law. Finally, the provisions for promoting the use of U.S. support services could be very important in the further development of a shoreside fishing industry in Alaska, as well as along the rest of the U.S. coastline.

ALASKA STATE JURISDICTION

During the 1984 Congressional session, an amendment to the Magnuson Act was enacted which extended Alaskan fishery management jurisdiction to the federal intrusion waters of southeast Alaska, except for the management of crab species. The intent of this amendment was to rationalize the management of those fisheries which, because of the unusual geographical and political configuration in the Southeast archipelago, creates a very difficult management situation between state and federal regulatory schemes.

One serious situation which led to the passage of this amendment occurred when the inside, southeast sablefish fishery in federal waters was opened under federal regulations, while the inside state fishery remained closed. This occurred despite the fact that the management guidelines for the federal area were based upon the outside fishery, rather than on the inside fishery. Consequently, the fleet was harvesting what was intended to be the state quotas and not the federal quotas. This conflicting management system was intended to be rectified by the amendments last year. However, the crab fisheries were not included. In order to bring consistency between federal and state regulatory systems in the Southeast crab fisheries, the State supports this amendment. Further, it should be recognized that the overwhelming amount of crab harvested in southeast is taken in state waters in any event, and there is very little federal interest in managing these fisheries.

Similar difficulties with the management between state and federal regulatory schemes is of concern in the waters of southcentral Alaska. Upper and Lower Cook Inlet fisheries have traditionally been managed by the state. Intrusion of federal waters in this area, while not quite as complex as the Southeast archipelago, leads to inconsistencies between federal and state regulatory programs. Extending Alaska's fishery management jurisdiction into these waters would resolve the problems.

Section 5 goes on to extend the authority of the Governor of Alaska to allow joint ventures in the territorial seas when it is not possible to conduct the operation in the internal waters of the State. The situation has arisen in the Norton Sound area of Alaska where there are no internal waters in the immediate vicinity of the fishery for which domestic processing capacity does not exist. This amendment would recognize that in these situations, there is no purpose served by limiting the joint venture, and consequently, the ability of the fishermen to sell their catch, because of this geographical anomaly. It is for this purpose that the State strongly supports Section 5 of S. 1245.

LAW OF THE SEA REFERENCES

The State supports the removal of the Law of the Sea references. The fisheries provisions of that treaty are not in the best interests of the United States and are in conflict with current U.S. fisheries policy. Consequently, there is no longer any need to have these references contained in the Magnuson Act.

FOREIGN FISHING FEES

The State supports the increase of foreign fishing fees. U.S. and Alaskan processors operate at a substantial disadvantage in comparison to foreign harvesting/processing operations as a result of higher U.S. capital and labor costs and a substantial state and federal regulatory environment. An increase in foreign fishing fees would help to place existing or potential U.S. groundfish processors on a more equal competitive footing. However, one potential risk associated with increasing fees should be noted. Foreign fishing companies with both direct fishing and over-the-side joint venture operations might attempt to pass on increased costs to their U.S. harvesters in the form of decreased prices. We would urge the Committee to take into account both potential benefits and costs in creating a balanced schedule for increasing foreign fees. Perhaps an incentive program linking potential fee increases, or the lack thereof, to foreign contributions to "Americanization" could be explored.

REVIEW OF PETITIONS BY THE UNITED STATES TRADE REPRESENTATIVE

This provision, similar to the one contained in Section 3 of S. 1245 concerning reciprocal fishing arrangements in international fishing agreements, recognizes that it does not make any sense for the United States to permit a nation from fishing stocks under our exclusive management authority, when, at the same time, such nation is practicing unjustifiable, unreasonable, or discriminatory acts against U.S. commerce in fish or fishery products. If the United States is to provide benefits to foreign nations by permitting fishing in our zone and by permitting imports of fisheries products into the United States, then there should be a recognition of reciprocal responsibilities on behalf of those foreign nations.

An example of this problem concerns the restriction by Japan on the import of fishery products at the same time that the Japanese are permitted unlimited importation of surimi products into the United States. Not only is this discriminatory, but it also is a serious impediment to the development of a United States' surimi industry. The State of Alaska strongly supports this provision.

FUNDING OF REGIONAL FISHERY MANAGEMENT COUNCILS

Council funding is of particular concern to the State. Adequate funding to meet statutory obligations is mandatory. A $7.5 million authorization is actually equal to the fiscal year 1980 appropriation which, in current year dollars, is too low to meet 1986 responsibilities. Funding mechanisms, such as including council expenditures in the President's budget, must be found to assure that fishery management plans can be implemented and the conservation of the resources assured. This is true for NMFS as well as the councils, because as foreign operations are phased out of the Exclusive Economic Zone, new funding sources must be identified to continue management programs, such as onboard observers for the growing U.S. fleet.

CONCLUSION

The bills before the committee have very important implications for the future direction of the United States fishing industry. We appreciate the opportunity that the Committee has provided to present our views. We will be available to work with you on the issues discussed here as they are more fully explored and refined.

Senator MURKOWSKI. Excuse me, Mr. Chairman. If I may, just for the benefit—you might want to view the photographs. I have the photographs of the alleged Japanese vessels here that show tarps covering at the stern, so they are unidentifiable for all practical purposes, but because of coloring and size, they fit the traditional Japanese type.

And, of course, we have another file here, and I will just leave them up here at the end—Taiwanese vessels that have been identified.

Thank you. Sorry for the interruption.

Senator GORTON. Richard?

Mr. GUTTING. Good afternoon, Mr. Chairman. I am Richard Gutting, vice president for government relations of the National Fisheries Institute. The Institute is a trade association, made up of 1,200 member companies located throughout the United States, engaged in all facets of our industry, including harvesting, processing, and marketing.

Thank you for the opportunity to testify today. We would also like to thank the sponsors of the three bills before the committee today. There are many provisions in these bills which we think would improve the management and development of our fisheries.

Our position on these bills is outlined in my testimony. I would like to mention a few issues before turning my focus of attention to the foreign fishing provisions, which I think are the most significant.

First, the committee should address the issues in Senator Lautenberg's bill, particularly in the area of civil penalties, the foreign observer program, and the representation of the commercial fishing industry on the councils. These are three very important issues to our members. They are addressed in his bill and they are detailed in my written testimony.

Also, the proposals in Senator Stevens' bill regarding straddling stocks, trade, foreign fishing fees, salmon and the other issues mentioned by the previous witness are very important. We think that many of the ideas raised are very significant.

On the straddling stock issue, Senator, we do not have the information that we would like to have about whether or not there are fishable concentrations beyond our Zone, whether the foreign fishing activity out there is adversely impacting U.S. management, or U.S. markets. We ought to get answers from the Government on the condition of those stocks, and if it is necessary to do something, then we ought to take appropriate action. You have raised an important issue and we hope that the fact that we are not talking about it very much here today will not dissuade the committee from pursuing that issue.

Turning to foreign fishing, the basic policy of the institute for the past several years has been to support all efforts to replace foreign harvesting in U.S. fisheries by 1988 and all foreign processing by 1990. We have been working with many of you on the committee over the last couple of years to achieve those objectives.

In the last 2 or 3 years, our major strategy has been to support the coalition which has been negotiating on an industry-to-industry basis with the Japanese. Much of the leadership of that coalition sat before you on the previous panel.

I do not think there is any doubt that that coalition has made significant progress. There is grave concern among our membership, though, that the strategy we are pursuing will work again in the future. There are indications that we need a clear national policy coming out of the Congress if we are to maintain the rate of development that we have had in the past.

One indication is that if you look at the data over the last couple of years, yes the U.S. industry has increased its harvest, but it has been production added to foreign fishing levels. The foreign fishing

levels have only come down about 7 or 8 percent in the last couple of years.

If we are going to continue the progress, it has got to come at the expense of the foreign fleets. That means any future negotiations are going to be tough because it is really going to hurt.

There is a consensus, I think, because of that and because of the developments that have occurred over the last couple of months that something needs to be done, that the strategy we have been pursuing should be changed.

Senator Stevens, your bill and Senator Gorton's bill are very similar with regard to 1986. We think the proposals in both bills for 1986 are perfectly justifiable if you look at the track record of our industry. You both would set aside reserves. You both would reduce TALFF. If you look at those numbers and you look at the past performance of our fleets, what you are proposing is perfectly reasonable.

Where your two proposals begin to go off in slightly different directions is what happens in 1987 and beyond. It is understandable that you would begin to get differences as to what should happen after 1986 because we do not know as much about what is going to be going on in 1987, 1988, and 1989 as we do in 1986. But I do want to emphasize, the Institute believes that what you both are proposing for 1986 is reasonable.

We have two concerns, principal concerns, about what happens after 1986. The first Bob Morgan alluded to. Our members are very concerned about bilateral negotiations on a long-term basis. We do not like the idea of long-term bilateral agreements negotiated by our Government. There is just too much uncertainty to lock in a particular situation for several years.

We would be very concerned about long-term, 5-, 10-year type agreements.

The second concern we have is, with all the focus on surimi in the last couple of years, it is very easy to forget that we have a very significant pollock market right here in the United States which has been there for the last 15 years. That pollock market depends upon low-cost processing in overseas plants which is able to take the parasites out of the pollock and provide a very high-quality, low-cost block. Whatever you do in terms of legislation should take into account the needs of the current seafood industry for that supply.

With those two comments, my time has expired.

[The statement follows:]

STATEMENT OF RICHARD E. GUTTING, JR., NATIONAL FISHERIES INSTITUTE

I am Richard E. Gutting, Jr., Vice President for Government Relations of the National Fisheries Institute. The Institute is an association of 1,200 member companies engaged in all facets of the United States fishing industry, including harvesting, processing, and marketing.

Thank you, Mr. Chairman, and the other members of the Committee for the opportunity to testify. The bills before the Committee today raise a wide range of issues of vital concern to our members.

The Institute believes that many of the provisions in these bills would improve the management and development of our fisheries. Some, however, should be clarified, and a few should be deleted. Our specific views and comments follow:

1. Exclusive economic zone: The Institute recommends that the Magnuson Act be amended to conform with the President's Exclusive Economic Zone Proclamation of

March 10, 1982. This change should be consistent with the proclamation and not change the respective jurisdiction of the states and the federal government. Such a change is made in the reauthorization bill (H.R. 1533) approved by the House Merchant Marine and Fisheries Committee last month.

2. Highly migratory species: The Institute is opposed to the proposal in S. 747 to include tuna under the exclusive jurisdiction of the Act. Highly migratory species require international management to ensure that proper harvest restrictions apply throughout the range of the fishery. A reversal of the present U.S. policy, which excludes tuna from the Act, could adversely impact the U.S. distant-water tuna fleet and would not contribute to the conservation and management of those tuna harvested within the U.S. Exclusive Economic Zone.

3. Foreign fishing: The Institute's policy is to support all efforts to replace foreign harvesting in U.S. fisheries by 1988 and all foreign processing by 1990.

Our strategy to achieve these objectives has varied depending on the fisheries and circumstances concerned. On the west coast we have supported the efforts of a coalition of American companies to develop the pollock and cod fisheries in cooperation with Japanese companies. With the support of the Congress and Administration, this coalition has negotiated a series of agreements during the past three years which have provided for the rapid expansion of U.S. harvests. The most recent agreement was negotiated in December of 1984.

This Committee has played a key role in the success of these negotiations. The 1984 negotiations for example were made easier because Congress approved legislation making it clear that fishing allocations are a privilege to be earned by foreign governments through efforts to promote the development of the U.S. industry.

This industry-to-industry approach to implementing the so-called "fish and chips" policy seems to be working again this year. Japanese companies, for the most part, have honored the commitments they made last December to increase their purchases of U.S.-processed groundfish products such as surimi. In the past few weeks two specific agreements have been reached between Japanese and U.S. companies for the production of surimi at shorebased facilities in Alaska. This success has encouraged the initiation of industry-to-industry discussions between Korea and the U.S. which are scheduled for later this month.

Whether or not this industry-to-industry approach is the best strategy for the future is unclear. Up to now the rapid expansion of U.S. harvesting of pollock has resulted in only a 7 to 8 percent decrease in foreign harvests. U.S. growth has been added to foreign harvest levels. Overall production, both foreign and domestic, for example, increased over 30 percent, between 1980 and 1984.

Future U.S. growth in the pollock fishery must come at the expense of foreign fleets. This means any future industry-to-industry negotiations will be more difficult. This may mean that we should pursue a new strategy next year. S. 1294 and S. 1384 offer two different alternatives.

Some of the individuals involved in the industry-to-industry discussions agreed last month to the phase-out process incorporated into S. 1384 and to some extent in S. 1245. While these two bills differ in several significant respects, their basic approach to what should happen in 1986 is the same. Both concern only the Pacific Northwest. Both call for a 40 percent reduction in the total allowable level of foreign fishing (TALFF) for pollock in 1986 and the establishment of reserves for U.S. harvestors (40 percent) and processors (60 percent) with this reduction.

The projected TALFF for pollock this year is approximately 900 thousand metric tons. The 40 percent reduction in foreign fishing called for in S. 1245 and S. 1386 in 1986 appears to be reasonable. Given the past performance of the U.S. fleet it is not unreasonable to expect U.S. harvests to increase by 360 thousand mt provided markets are available. U.S. pollock harvests, for example, rose 340,000 mt in 1983 and 355,000 mt in 1984.

What is less clear is whether U.S. companies will be able to process 60 percent of the proposed reduction in TALFF in 1986. Last year American companies processed only 24 thousand metric tons. In December, however, Japanese companies agreed to purchase 140 thousand mt in 1985 for delivery before the end of 1986. Significant expansion in new processing capacity was announced last month and it does not seem unreasonable to target the amounts provided for in S. 1245 and S. 1386.

S. 1245 and S. 1386 differ in their strategy after 1986. This is understandable since it is less clear what will occur in 1987 and beyond.

Many of our members are uncomfortable with the proposal in S. 1386 which calls for the negotiation of long-term bilateral agreements with foreign countries. As the U.S. industry approaches full utilization of our fishery resources, the federal government should get out of the "fish and chips" process which involves trading fishery rights among foreign and domestic competitors.

On the East Coast, our members believe that the U.S. industry is close to developing several of our non-traditional fisheries. We've taken the position that all foreign involvement in the loligo squid fishery should end immediately because of the growth of the U.S industry. One of the significant events this year is the development of a new fleet of U.S. harvesting-processing vessels. Our members fear that the government-to-government negotiation of long-term agreements might slow down these encouraging developments.

Our members also are concerned that any legislation intended to promote the replacement of foreign companies with U.S. companies in the pollock fishery take into account the needs of the U.S. seafood industry for high-quality, low-cost blocks.

With all of the recent attention on surimi it is easy to forget that there already is a significant pollock market in the United States. This market was pioneered by a U.S. secondary processor approximately 15 years ago. Prior to that time Alaska pollock had been considers a "trash fish" by American companies because of its poor keeping qualities when iced. A technology was developed by this U.S. company together with a Japanese company whereby quick freezing after catch preserved it and permitted processing it into fish blocks of excellent quality.

The U.S. market for pollock was built using filleted pollock blocks in fish sticks and portions, breaded and battered, which could be delivered to the U.S. consumer at an attractive price. This low price positioned pollock favorably versus chicken in the U.S. marketplace as an excellent source of protein and was responsible for the dramatic growth of pollock consumption in the U.S.

To supply part of the U.S. market for pollock blocks, Alaska pollock is harvested and frozen in the round. It is then shipped to overseas plants where it is filleted and frozen into block form in a labor-intensive operation. These blocks are then imported into the U.S. where they are further processed into a wide variety of products. The key step, from a cost standpoint, is the low-cost overseas block production from frozen whole fish.

If the price of pollock blocks were to increase substantially, the consumption of pollock in the U.S. could plunge since the consumer might then perceive chicken as a better value and might switch to that protein source. This must be kept in mind. Otherwise legislation which might appear to be a device for Americanizing our industry could instead injure it severely.

Last year our Board agreed unanimously that our fisheries should be Americanized by 1990. They have not yet reached a consensus, however, on exactly how to best achieve the economic climate needed to reach this objective.

Both S. 1245 and S. 1386 are headed toward the same objective. Efforts should continue to resolve the outstanding differences and developed a proposal which is in the best interests of everyone in our industry. If all else fails, the Committee might consider enacting those portions of S. 1245 and S. 1386 relating to 1986 and take the issue under consideration again next year when we will know more about economic conditions in the fishery and when the Administration submits its recommendations regarding the regional fishery management councils.

4. Allocation criteria: The Institute is opposed to the proposal in S. 1245 to broaden the foreign fishing allocation criteria in section 201(e) to include a consideration of whether or not foreign vessels are using U.S. services and supplies. This change would dilute the "fish and chips" leverage needed for the benefit to the fishing industry.

5. Trade remedies: The Institute supports the proposals in S. 1245 which would encourage the use of the Section 301 trade process. Potential United States producers of surimi have been faced with an extremely low quota allocation governing imports of their product into Japan. While recent changes to this quota have been made to accommodate U.S. growth, further changes are needed if U.S. exports are to expand. These import quotas are a classic type of trade practice which needs to be remedied.

Section 301 of the Trade Act of 1974, as amended in 1979 and again most recently by the Trade and Tariff Act of 1984 authorizes the President to respond to certain unfair foreign practices. The operative language provides that, if the President determines that action is "appropriate" to respond to "any act, policy, or practice of a foreign country or instrumentality" that is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce," the President shall take "all appropriate and feasible action within his power" to enforce such rights or to obtain the elimination of such act, policy, or practice. Section 301, in short, is a means by which United States citizens may petition the government and enlist its authority and power to eliminate barriers to U.S. exports.

6. Fees: There is evidence that the federal government is substantial undercharging foreign fleets under the present fee system. The Institute believes that foreign

fishing fees should be increased above present levels to recover their true value to the foreign fleets and as a management tool where apppropriate to discourage the harvest of certain species.

7. Civil penalties: Under the present civil penalty process, NOAA assesses a penalty for alleged violations of the Act and informs fishermen they have the right to a hearing before an Administrative Law Judge to contest the determination of the violation and the size of the penalty. The Administration Law Judge hearing these cases, however, routinely issues a higher fine than initially assessed if he finds that a violation occurred.

The Institute supports the proposal in S. 747 which would limit the ability of the Administrative Law Judge to increase the civil penalty assessed. Current procedures discourage defendents from exercising their right to a hearing.

8. Observers: We support the proposals in S. 747 which would close two loopholes in the current foreign observer program. Strengthening the program as proposed will help increase observer coverage of the foreign fleets and promote greater safety for observers.

9. Straddling stocks: S. 1245 would extend U.S. jurisdiction to include all "straddling stocks" which are those stocks located both within and beyond the U.S. zone except if they are within the zone of another country. This concept could include such species as po'lock, Pacific herring and Pacific cod.

It is unclear whether there are fishable concentrations of straddling stocks beyond the present jurisdiction of the United States. It also is unclear whether or not unregulated harvests of these stocks are significantly impacting either the stocks, the management of the stocks by the United States, or the markets for these stocks.

The Institute believes that this proposal raises significant issues which should be investigated further. We urge the Committee to ensure that a complete study is made of the relevant facts and that appropriate steps are taken to protect U.S. fishery interests in these stocks.

10. Council appointments: For the past few years the Institute has received numerous complaints about the lack of representation the fishing industry has on the regional fishery management councils. This year we completed a study of the issues which found a significant imbalance on several councils. This imbalance has become so serious that it threatens to impair the effectiveness of the councils concerned.

During the past few months several different legislative amendments to resolve the issue have been discussed. Meetings also have been held with Administration officials. While we do not have a specific proposal at this time, we urge the Committee to investigate this issue and take appropriate action.

Thank you, again, Mr. Chairman for inviting me to testify today. I would be please to answer any question.

Senator STEVENS. Mr. Burch.

Mr. BURCH. Thank you, Senator Stevens, Senator Gorton, Senator Murkowski. My name is Al Burch. I am the manager of the Alaska Draggers Association. My brother and I also own two draggers based out of Kodiak. We are originally shrimp fishermen—now bottomfish and whitefish.

Let me start by stating that the Alaska Draggers Association does support the Americanization of fisheries in the U.S. FCZ. I became manager of the Alaska Draggers Association in 1977 and every elected board since then has directed that we support the full development of the shore-based white fish industry. They have also directed me to do whatever I could to ensure they had markets until that development took place. A large number of our vessels are now involved in various joint venture operations. Some have delivered to shore-based operations whenever the opportunity arose. Some boats have gone bankrupt.

We have expended large sums of money to convert our vessels to high seas trawlers. We have dedicated many long hours and days in negotiations with the Japanese in the industry-to-industry meetings over the past 3 or 4 years. The end of this month we will sit down with the Koreans in the same type of meetings for the first time.

In the early meeting with the Japanese, the emphasis was on the Americanization of fishing. At the last meeting, I feel the most negotiated points were surimi and purchase of domestically produced product. The success we have had has been achieved by agreeing to positions we could support before our council and the Federal Government. Some of these agreements were not very popular in the United States or Japan. I feel that both sides, by standing behind these agreements, have set the stage for some remarkable achievements.

Two multimillion dollars surimi plants have been announced for Alaska. A number of analog plants are being studied for the west coast. Some have been announced and some have been built and are producing product. The joint venture boats are catching and selling hundreds of thousands of metric tons of whitefish. In 1979 we took only 2 percent of the groundfish optimum yield; in 1985 it will be around 44 percent. I could go on with more numbers, but will refer you to Dr. Alverson's discussion paper on the Americanization of the FCZ.

We have used direct allocations to force foreign companies to help us develop shorebased production. Precedence has been set which we can expect to be a continuing and growing trend such as we saw in the joint ventures where TALFF was used as a lever to increase participation.

In time of transition, it would seem disastrous to change a policy that is obviously working. Setting a date-specific phaseout could delay shorebased development. We expect, as happened with joint ventures, a more rapid development than one might anticipate at this time.

We feel the phaseout would not only remove our strongest bargaining position, but would also slow the rate of shorebased development. Our policy of rewarding those who help us and putting foreign nations in competition to assist our industry is our most effective method of Americanizing our fisheries.

In order to rapidly achieve this goal, we need to maintain optimum flexibility to be able to respond to a rapidly changing international and domestic fishing industry.

I thank you for the invitation to testify today and will try to answer to the best of my ability any questions you may have.

I also have a letter from Dave Harville that he would like me to read into the record if I may.

Senator STEVENS. Please do.

Mr. BURCH. This is addressed to Mr. Danforth.

As managing owner of Kodiak Western Trawler Group and as negotiating representative of Alaska based whitefish harvesters in United States-Japan meetings, I would like to go on record as opposing any date-specific phaseout of either foreign fishing in the FCZ or joint ventures.

To legislate date-specific phaseout of TALFF would take away one of the most important negotiating tools we have.

We have rewarded our foreign partners for performance in such things as reducing high seas salmon interception, increased joint ventures, more processed product purchases, etc. by increasing or maintaining foreign allocations of whitefish.

To arbitarily remove this tool altogether would weaken our position considerably in future negotiations.

To phase out joint ventures at this time or in the forseeable future would serve to put 150 American boats and crews out of business, and makes no sense whatsoever.

I am in favor of orderly phaseout based on the proven ability of our harvesters and processors to take over, but I fear that this is not to be until the American dollar weakens and American processors show the ability to compete in a world situation, and our government supports our industry with restrictions to match foreign restrictions.

I also support the Alaska Draggers Association and Al Burch in all their positions.

Sincerely, Dave Harville, Kodiak, Alaska.

Dave apologizes for not being here today. He had some family matters he had to attend to in California.

Thank you.

Senator STEVENS. Thank you very much for bringing that letter.

The next statement is from Ms. Lucy Sloan.

Ms. SLOAN. Thank you, gentlemen.

There are several points that I would like to highlight, and I would be glad to answer any questions you might have about my prepared statement.

First, I noted with some chagrin, after I turned in my testimony, that I had not reiterated our continuing support for the amendment of the "basket clause" to the fisheries matters only. That continues to be something about which we are very concerned, and it has gotten to be so automatic in our outlook that I neglected to put it in the testimony, and I apologize. That is very important to us, and we would like to work with you to see it.

On the straddling stocks, although there are obviously some conservation considerations that make that an important issue to explore, it is for the east coast fishermen whom I represent, a very sensitive issue right now because of the boundary between the United States and Canada which was just recently handed down. And because the Canadians, as you all will recall, during the Law of the Sea, were wildly enthusiastic about extending their jurisdiction beyond 200 miles and because of the problems that the delineation of that boundary presented to us and the difficulties as regards where we will go at this point in terms of conservation and management of the resources, stocks which we have always called straddling stocks—meaning between the exclusive economic zones of two countries—we are concerned to explore that further before we enact it in the legislation.

I think that there are different combinations and permutations of how something, a provision that is general as that, might be worded. And before we go ahead and look at what those conservation responsibilities are to the point of legislating them, we would like to explore it further with you to make sure that we are not short-circuiting opportunities for U.S. fishermen.

On the reciprocal on GIFA's, so-called—and that is a term about which I am beginning to be uneasy—that, too, is something that, particularly with the Canadian boundary on the east coast and the growth of the fleets on both the west coast and the east coast, we would very much like to explore opportunities to fish elsewhere. We are building larger and larger vessels.

And one of the things that has consistently concerned our people with medium-sized vessels in various fisheries is the idea that they are going to have to compete with these much larger vessels. The much larger vessels are quite interested in looking at opportunities, not necessarily limited to the U.S. exclusive economic zone.

And I look forward to hearing from Ambassador Wolfe about the details of his trip to Moscow because we were very pleased that he was able at this time to go over and discuss the possibilities of fishing in the Soviet zone. And I think that there are other opportunities that may be available to us in the Atlantic as well.

So this is something that, although I am getting edgy about the precise implications of reciprocal GIFA's, I think that this, too, is something that we want to look at because it is a potential opportunity. Whether right now we legislate it or we do so after we have a better understanding of the opportunities available to us is a question that I would like to work with you on.

As regards the councils and what they have done through fishery management plans to emphasize development strategy, we are working with a number of councils on different kinds of development strategies and have found this an effective way of going about it.

One of the proposals in Senator Lautenberg's bill, for that reason, troubles us considerably. The idea of closing council meetings to hear confidential data about how joint ventures are conducted—and that by and large is the confidential data which has led to the question as to whether council meetings should be closed—we think would do a serious disservice both to the Council process as a whole because it has been an open process in which anyone who wished to could participate, and we are afraid that rather than help the overall development process by the marginally greater understanding that the confidential data would provide, it could serve to fracture the awareness of how decisions get made and for what purposes. So we would oppose that.

We also are very concerned that the commercial fishermen not be specified as having one seat, because it troubles us that in some councils we may find ourselves a minority of one. If all of the other interest groups that allege a justifiable purpose for being on that Council were to do so, we may find out that we would be further behind than we are now are by working with our Governors and with you all and with the executive branch on Council appointments.

And finally, we would like very much to see additional dollars for the Councils because with the foundations, they have been an intergral part of all of our planning for development, and the $7½ million limit is one which considerably troubles us, because we think that the Councils, through fishery management plans, will become increasingly important to fisheries development. And to limit them troubles us.

We would therefore—we are interested in the line-item possibility because that might lead to a stricter accounting. And we would like to see more money in the authorization for the Councils over time.

Thank you.

[The statement follows:]

STATEMENT OF LUCY SLOAN, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF FISHERMEN

Good morning, Mr. Chairmen, Senators. I'm Lucy Sloan, Executive Director of the National Federation of Fishermen. NFF is the only national organization of commercial fishermen. Our members fish from Alaska to Mexico and from the Gulf of Maine to the Gulf of Mexico. Among the species they harvest are demersal and pelagic finfish, crab, salmon, albacore tuna, shrimp, swordfish, lobster, clams, and scallops.

Rather than deal separately with S. 1386, S. 1245, and S. 747, given certain major overlapping provisions, I've organized this statement by issues.

. NFF strongly supports reauthorization of the MFCMA, although we continue to be concerned that the monies available for the Councils seem generally proposed not to exceed $7.5 million. Perhaps if you were to mandate a line item for the Councils--and there were to be an honest assessment of the importance of the Councils in the management process, we might be able to increase that amount for those Councils for which it could help improve the final products. Although there is general acceptance of at least two years reauthorization, there are those who would like to see a longer reauthorization, with a commitment to reassess the amounts after the Councils' two-year review in progress is completed.

. As regards Americanization generally, and the amendment of POOFF specifically, NFF members opinions range from outright opposition to strong support, with proposed amendments to the current proposals. NFF and our members have consistently supported what has come to be called Americanization--we worked closely with Senator Magnuson and Congressman Studds for the introduction of what became the MFCMA, and we have continued to work with you and others to improve our 200-mile law. On these proposals, specifically:

Those who oppose changing the law now are concerned that rather than help further to develop our fisheries, it would limit our flexibility by failing to account for the numerous unanticipated variables we've seen in different fisheries' evolutions in the last five years. There's also the concern that although there is no question all of our members would like to decrease foreign fishing as rapidly as possible, consistent with US industry development, that if we were to do so arbitrarily we might find ourselves with too little processing capacities in various fisheries and too much returned pressure on on the already fully fished traditional species. And, perhaps unexpectedly, those on the East Coast who wish fully to develop Atlantic mackerel for the US industry fear that the 65,000 MT limit might serve to constrain that development.

On the other hand, the history, if you will, of the considerable thought and effort which went into developing the compromises we're considering today also reflect the knowledge, experiences, and concerns of a vital part of the industry concerned with long-term development. Were some analgamation of these proposals to become law, clearly, the bilateral arrangements would be vital to work toward continued development. Rescheduling of the proposed reserve percentages on different species should also be part of any final proposal, as should some realistic and clearly-defined method for releasing from the processors' reserve--in a timely fashion--any unused portion of that part of the reserve so that US fishermen could benefit from it.

. Because of the various interpretations of what foreign fishing costs are at any given time, several have questioned the 50% annual increase in foreign fishing fees. And some fishermen working with joint ventures have expressed concern that greatly increased fees might diminish the foreigners' enthusiasm for joint ventures generally and the prices for joint ventures fish paid to fishermen specifically.

. The so-called straddling stocks provision--the definition of which is a different use from that with which many of our fishermen are familiar (in many fisheries, it's been used interchangably with "transboundary")--raises several questions as regards international law, policies, and fisheries management strategies. Before our members take a position on this, therefore, many of them wish to have a better understanding of what the ramifications of this might be.

. NFF has consistently supported a reciprocal GIFA with the Soviet Union, and some are interested to explore other opportunities as well. But because the MFCMA now could accommodate these, and because each case will present different opportunities and different quids pro quo, some have questioned the need to do this now. They would like to explore further what ramifications might be.

. Foreign vessels provisioning in US ports would certainly be advantageous to US ports, but it is not clear that it would similarly benefit US fishermen. Therefore, before we were to amend something as basic to US fisheries development policy as the extended TALFF criteria, we should have wider understanding of what gains including it would actually bring to the US fishing industry.

. NFF has supported including a habitat provision in the Findings and Purposes of the MFCMA, but thinks that going beyond that highlighting is not necessary. Consensus is that because both the mandatory and the discretionary provisions would allow for whatever amount of habitat consideration a Council thought appropriate for an FMP, emphasizing it to the degree proposed could risk having the tail wagging the dog by putting special emphsis on the quality and quantity of environmental information. Fishermen recognize the need for a balanced habitat for successful long-term fisheries management, but we continue to be concerned about emphasis on fish as the constituents, not fishermen.

. The observer proposals are clearly on the right track, but the specifics may need reworking to prevent problems for US fishermen and for joint venture operations with which they are involved. We would like to explore this further with you.

. We are increasingly--and in some cases, painfully--aware of the importance of safety in fisheries management, but we have reservations about the desirability of including it as a part of the National Standards. Some have optimistically suggested that by the time this proposal might become law, we would be more confident that we were beginning to have the current problems better under control. And if that were the case, including what we devoutly hope will be a variable in the National Standards would be unnecessary.

. We strongly support amending the MFCMA to require that Council members be knowledgeable and experienced. And although we would like to see at least one --and preferably many more--practicing commercial fisherman on each Council, there remains the difficulty which has always deferred this kind of specificity as regards Council appointments: if we were to mandate one of every interest group, we might find commercial fishermen in the minority--a chance that thus far we have been unwilling to take.

. We think that the pertinent data should go not only to the Secretary, but also to the Council, where, presumably the Executive Director will handle it appropriately. Our only difference from the proposed amendment is that we think that the Council, not the Executive Director himself, should clearly be understood to the be recipient. The legal questions are still not entirely clear for each circumstance, but as regards confidential data, the Executive Director may be appropriate, although here too the information will ultimately be used by the Council.

. We continue to have a problem with closing Council meetings to have the Council deal with confidential data. One of the Councils' strengths has been that it is an open process--poorly understood in some cases, but open to all. To close it would confuse, perhaps prejudice and delay, a process in which we're trying to increase industry participation and understanding. Any gains which might accrue in the short term could too easily be outweighed in the long term, as political manoeuvring to find out what had gone on behind closed doors increased.

. Many NFF members continue strongly to oppose limited entry and therefore to think unnecessary and undesirable any dislocation compensation scheme in law. If, however, this were to happen--and we hope it will not--this proposal should be coordinated with the the House language.

. Before we are comfortable with agreeing to the proposal for civil penalties, we would like to have more clearly defined what "significant" information and circumstances might be.

Thank you.

Senator STEVENS. Thank you.

We would like to work with you on the straddling thing, no question about that.

Ms. SLOAN. Thank you.

Senator STEVENS. The next witness, Jim Campbell.

Jim is the chairman of the North Pacific Fisheries Management Council.

Mr. CAMPBELL. Thank you, Senator Stevens, Senator Gorton, Senator Murkowski.

My testimony today represents the view of the North Pacific Council and will generally complement that offered later by Bob Martin of the Mid-Atlantic Council.

I will address my comments to S. 1245 and S. 1386, since they both focus on the North Pacific Council jurisdiction. For comments on S. 747, I defer to Bob Martin.

Our Council strongly supports S. 1245 because we believe it contains provisions that will enhance both U.S. control over foreign fishing fleets and efforts to develop the domestic fishing industry.

Expansion of U.S. management authority over stocks that straddle the outer boundary of the FCZ will ensure that Americanization of our fisheries is not hampered by foreign fleets harvesting just outside the zone those stocks so important to the U.S. industry.

This authority may also allow us to set true optimum yield levels for those stocks. Establishment of accurate yield levels can be difficult unless we are able to account for all harvest stock, all effort on the stock.

Our Council believes it is extremely important to establish as national policy opposition to the high seas interception of U.S. origin salmon. This is especially relevant in the light of recent action as mentioned today by the Japanese land-based fleet targeting on our salmon.

I was interested—I was in Taiwan—and had an opportunity to meet over there with Taiwanese industry, and I was interested today to hear from Secretary Wolfe that they have come to an agreement. I wonder if they have agreed to furnish us catch information. At the time I was there, that was still not agreed to, and I wonder still if it is.

One of the major complaints we hear from fishermen is that the foreigners are getting our fish at bargain basement prices. S. 1245 addresses this problem by providing for substantial increases in foreign fees. We recommend that revenues generated by fee increases be used to support Federal fisheries management.

By linking direct foreign allocations to the additional use of U.S. support services, we recognize the U.S. fishing industry is multifaceted, and by doing so derive the greatest possible benefit from foreign allocation.

As proposed in S. 1245, the delegation of management authority to the State of Alaska in certain intrusion areas will reduce duplicate management effort in our region. There is no apparent need for Federal fisheries management in these areas, and the State has more than adequate regulatory mechanisms and enforcement capability to assume management responsibility and to remove the need for expending Federal resources.

We, along with the other Councils, recognize the deficit reduction burden under which Congress finds itself this year and are committed to do our part to reduce the cost to Government where possible. We would like to see additional funds provided to allow updating existing fisheries management plans and funding new research activities.

We would also prefer a long reauthorization period, but we accept the Senate's proposed funding level and reauthorization period in recognition of the Congress' funding constraints. But I want to point out that in our Council, for example, in the North Pacific, we have reduced our Council meetings from nine to five, we restrict some of our meetings to holding them in Anchorage rather than throughout the State, and we have had reductions in our programmatic fundings which are now at a current level for all Councils at $50,000.

S. 1245 provides a separate line item for Council funding. The North Pacific Council appreciates this proposed solution to the problems between the Councils and NMFS over Council budget. Funding the Council through the Department of Commerce was an attempt to reduce administrative cost of the MFCMA. However, the cuts in Council budgets the Department has proposed in recent years have threatened the very existence of of the Councils as fishery management entities. Fortunately, Congress has restored these funds, but we are again faced with similar proposals for fiscal year 1986.

Senator Stevens, we are grateful to you for your interest in resolving these problems, and know that you will agree that changing the Council's budget to a line item in the President's budget will not insulate it from those who oppose the Council system. We suggest that we might look at direct appropriations such as those provided to the Marine Mammal Commission—would be clear evidence of congressional intent that the Councils are to be independent entities.

We realize that there is widespread support in the U.S. fishing industry for some time certain end to foreign fishing in the U.S. waters and have been committed to the removal of foreign fleets from our jurisdiction at the earliest possible date.

We believe we have made good progress in making this commitment and cite as examples the increase in the domestic harvest of groundfish off Alaska from 2,000 metric tons in 1977 to a projected 1.2 million metric ton catch this year. And our proposal is that there would be no foreign allocation next year in the Gulf of Alaska and in the area within 20 miles off the Aleutian Islands.

I think it is important that I just take a moment to explain how we came about with what we are talking about, these two new surimi plants that are going to be in Alaska. In December 1984, the Council decided zero TALFF for the gulf. In early 1985, the industry had a meeting in Seattle and they came back to the Council and said that we need your help; we want you to open up the gulf again to the Japanese fishing industry, and in return for that, we have this agreement.

We concurred in that. That is our job, and we were delighted that we could accommodate that and open up the gulf, and for that reason we had the agreement, the industry-to-industry with the

Japanese, but what I am pointing out is the need to be flexible. I think you have to be flexible in this fisheries business. Nothing is certain.

If you excuse me, I seem to be one of the few Alaskans here. If I could take just 1 more minute, Senator.

We are concerned that the phaseout proposal in S. 1386 which mandates annual reduction in TALFF on a nation-by-nation basis may maintain allocations at relative status quo levels and deprive the Council of the flexibility needed to shift allocations to the highest bidders in terms of fish and chips.

We would suggest instead the establishment of a deadline for removal of foreign fleets and a strengthening of the Council role in reducing TALFF, so a Council could adopt its own phaseout schedule. The phaseout described in S. 1245 provides a Council role in TALFF reduction. However, the amendment appears to give the Secretary of State the authority to determine whether a deviation from the reduction schedule may be beneficial to the United States.

We suggest that the Council be given either concurring or consulting role in these determinations or the addition of a provision that the secretarial action may not be taken unless it is in response to Council action.

We oppose bilateral agreements, and we are concerned that no mention is made in either of these bills about a phaseout of joint ventures. This issue should be given to the committee's attention in the near future. Joint ventures may be a necessary step in the development of our fishing industry, but we are concerned that they become an institutionalized impediment to full Americanization.

Thank you.

[The statement follows:]

STATEMENT OF JAMES O. CAMPBELL, CHAIRMAN, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Senators Stevens and Gorton, members of the Committee - I am Jim Campbell, Chairman of the North Pacific Fishery Management Council. I greatly appreciate the opportunity to comment on the Senate bills reauthorizing the Magnuson Fishery Conservation and Management Act. The testimony I am providing represents the views of the North Pacific Fishery Management Council and will, generally, complement that offered by Bob Martin on behalf of the other Council chairmen.

I will address my comments to S. 1245 and S. 1386 since they both focus on the North Pacific Council's jurisdiction. For comments on S. 747 I will defer to Mr. Martin.

S. 1245

With only one suggested change, our Council strongly supports S. 1245. The bill contains provisions that will enhance both U.S. control over foreign fishing fleets and efforts to develop the domestic fishing industry as well as efforts to reduce duplicate management effort in the North Pacific Region.

Expansion of U.S. management authority over non-anadromous stocks that "straddle" the outer boundary of the FCZ, will provide an important management tool for the Councils. We need such a management authority to ensure that efforts to Americanize our fisheries are not frustrated by foreign fleets harvesting just outside the FCZ those stocks so important to the U.S. fleet. In our region, this authority would be applied to pollock, cod and herring stocks in the Bering Sea and may allow us to set true optimum yield levels for these stocks. Unless we are able to account for all harvest effort on a stock, establishment of accurate yield levels is a frustrating process.

Foreign fleets fishing outside the FCZ have also produced drastic impacts on North Pacific salmon stocks. Our Council strongly supports Section 3, subsection (d) of S. 1245 because it establishes as National policy U.S. opposition to the high seas interception of U.S-origin salmon. This is especially relevant in light of recent actions by the Japanese land-based fleet targeting U.S.-origin salmon in disregard of International North Pacific Fishery Commission restrictions and U.S. law.

One of the major complaints we hear from fishermen is that the foreigners are getting our fish at bargain basement prices. S. 1245 addresses this problem by providing for substantial increases in foreign fishing fees. Currently those fees are supposed to be set at a level that covers the cost of management activity related to foreign fishing. While some recent reports question whether the U.S. is actually being reimbursed for these management costs it is clear that we are not being compensated for the true value of the resource. Increased foreign fees may allow the receipt of fair market value for our fishery resources as well as make U.S. fishery products more price competitive in world markets. The North Pacific Fishery Management Council recommends that revenues generated by fee increases be used to support federal fishery management.

Our Council also supports the concept of using fishery allocations to remove trade barriers by certifications of the U.S. Trade Representative. This proposal is another lever the U.S. will be able to use to guarantee broader access to world markets for its fishery products.

Development of the U.S. fishing industry was one of the main purposes behind enactment of the MFCMA. S. 1245 addresses this goal by strengthening the existing language on reciprocal fishing access to foreign stocks, and by linking direct foreign allocations to the use of U.S. support services. We must realize that the U.S. fishing industry is multi-faceted and not composed of just harvesters and processors. It is, therefore, incumbent upon us to ensure that, in exchange for foreign allocations, the entire spectrum of the domestic industry receives some benefit. Only by doing this will we provide for full development of the U.S. industry.

By delegating management authority to the State of Alaska in certain intrusion areas, S. 1245 will implement Congress' declaration of policy in passing the MFCMA that federal fishery management must be efficient and draw upon state management and enforcement capabilities. Under the bill, the State of Alaska will manage crab in the intrusion areas of Southeast Alaska and all species in the intrusion areas of Cook Inlet. There is no apparent need for federal fisheries management in these areas because there is no foreign fishing presence, vessels fishing in the areas are predominantly registered to the State of Alaska, and the fisheries in each general area are conducted throughout the State and intrusion waters. State management over all species in the intrusions would provide for uniform regulations in all areas inside the "surfline" in Southeast Alaska and inside Cook Inlet. The State of Alaska has more than adequate regulatory mechanisms and enforcement capability to assume the management responsibility and remove the need for expending federal resources. Those who oppose this delegation of management authority give as their main reason the desire not to create such a precedent; however that precedent was established last year when the MFCMA was amended to allow state management authority for all species other than crab in the intrusion areas of Southeast Alaska.

We, along with the other Councils, recognize the deficit burden under which Congress finds itself this year and are committed to do our part to reduce the cost of government where possible. We've reduced the number of North Pacific Council meetings from nine to five per year, the number of meetings held outside of Anchorage, and travel by plan team and staff members. We would like to see additional funds provided to allow updating of existing fishery management plans and funding of new research and management activities. Additional funding would also strengthen the Council's ability to develop long-range management strategies in order to better anticipate fishery management problems. The Council would also prefer a longer reauthorization period of four years, rather than the proposed two years. We accept however, the Senate's proposed funding level and reauthorization period in recognition of Congress' budgetary constraints.

Also in the matter of budgets, S. 1245 provides a separate line item for Council funding. The North Pacific Council appreciates this proposed solution to the problems that exist between the Councils and NMFS regarding Council budgets. Funding the Regional Councils through the Department of Commerce was an appropriate way to reduce the administrative costs of the MFCMA; however, the approach the Department has taken in recent years to the Councils' budgets actually appears to have threatened the existence of the Council's as fishery management entities. While the Department has, over the past few years, proposed cutting their overall budgets by 10% and NMFS budgets by 35-40%, they have proposed reducing the Council budgets by 55-60%. Fortunately for the Councils, Congress has reversed those cuts but we are again faced with similar proposed cuts for FY1986.

These proposed budget reductions are evidence that the Councils have no advocate for adequate funding within the Department of Commerce, but yet the Councils are provided no meaningful role in drafting the fisheries budget. The Councils are not even allowed to review the budget documents until they have been released to the public; consequently, they are often placed in the absurd situation of being requested by NMFS to comment on a budget initiative they have not seen.

Senator Stevens, our Council is grateful for your interest in resolving problems between the Councils and NMFS but we believe that changing the Council's budget from a line item in NOAA's budget to a line item in the President's budget may not insulate it from those in the bureaucracy who oppose the Council system. We suggest, instead, that funding the Councils through direct appropriations like those provided to the Marine Mammal Commission (under Section 207 of the Marine Mammal Protection Act of 1972) would be clear evidence of Congressional intent that the Councils are to be independent entities. Direct appropriations would also remove the bureaucratic maze through which Councils must maneuver before appropriated funds are disbursed to them. Currently, Regional Council funding requests are reviewed by NMFS Region, NMFS Central Office, NOAA, OMB and the Department of Commerce's Financial Assistance Review Board. This process has caused Councils to delay payments of bills and staff salaries and is clearly not conducive to efficient operation of Council offices.

Some may be wary of providing the Councils with direct appropriations but we believe that it is an idea that deserves a two-year trial period. If it does not have the desired consequences, the process can be changed during the next reauthorization period.

Both the proposed amendment to S. 1245 and S. 1386 provide reduction schedules for directed foreign fishing in the federal waters off Alaska. The North Pacific Council realizes that there is widespread support in the U.S. fishing industry for some time-certain end to foreign fishing in U.S. waters and we have been committed to removal of foreign fleets from our jurisdictions at the earliest possible date. We believe we have made good progress in meeting this commitment. Examples of this progress may be found in the increase of domestic harvest of groundfish off Alaska from 2,000 metric tons in 1978 to a projected 1.2 million metric ton catch for this year (or 49% of the total groundfish catch for 1985 off Alaska). The Council also intends that there be no foreign allocations next year in the Gulf of Alaska and in the area within 20 miles of the Aleutian Islands.

While a statutorily-mandated phase-out has great appeal, we are concerned the proposals before the Committee may circumvent the Council process and may not necessarily provide the best development opportunities for the U.S. industry. If there is to be an amendment to the Act regarding phase out of foreign fishing we would suggest the establishment of a deadline for removal of foreign fleets and a strengthening of the Council's role in reducing TALFF to allow a Council to adopt its own phase-out schedule for each species it manages. The Councils should also not be prohibited from reducing TALFF to zero before the statutory deadline if necessary to meet the needs of the domestic fleet.

Annual automatic reductions of TALFF will maintain allocations among foreign nations at relative status quo levels. Councils would not be able to shift TALFF to the highest bidder in terms of fish and chips. This prohibition could hamper development of the domestic industry.

The assignment of TALFF reductions into reserves may promote U.S. development but may also create management problems if allowed to accumulate in an open-ended account for harvest at some future date. Since fishery stocks are dynamic, there is no guarantee that a reserve existing on paper will exist in the water. This could negatively impact U.S. fishermen who gear up to fish a "paper" reserve.

Bilateral fishing agreements may provide a way to guarantee the U.S. receives the best chips for its fish but our Council opposes those provisions in S. 1386 regarding such agreements because the Council process is completely bypassed. The Regional Councils are the proper forum for discussion of proposed bilateral agreements and Councils should be given at least a consultative role, if not a concurring role, in the agreement negotiation process.

Our Council also suggests that no bilateral agreement extend beyond the term of a GIFA (normally two years). Eight-year foreign fishing agreements, as allowed under S. 1386, may not adequately consider rapid development of the U.S. fishing industry.

We strongly support the provision in S. 1386 that amends the basket clause to focus solely on fishery matters. The fishing industry in our region has been long opposed to linking fishery allocations to non-fisheries trade issues and foreign policy concerns.

Again, we appreciate the opportunity to comment on the reauthorization legislation. The bills before the Committee exhibit a deep interest by the Senate in ensuring the purposes of the MFCMA are fulfilled.

Senator Stevens: Thank you.

We will print your full statement in the record.

Our next witness is Henry Mitchell, United Fisherman of Alaska and the Bering Sea Fisherman's Association.

Mr. MITCHELL. Thank you.

Senator Stevens, Senator Gorton, it is a pleasure to be here today. I am Henry Mitchell with the United Fishermen of Alaska and also the Bering Sea Fisherman's Association. I am quite pleased that a number of individuals have spoken to the issue of high seas interceptions. At this present time in western Alaska this issue is foremost on the minds of individuals there. The chum fishery on the Kuskokwim River was completely shut down. The king salmon fishery was a complete bust.

The fishermen on the Kuskokwim River at the present time made a total of about $800 to $1,000 total income. That is the only income they have in that area. They feel very strongly that action should be taken quickly to stop all high seas fishing and all interceptions of either directed salmon fisheries or of other nondirect incidental catch fisheries, like the squid fisheries, by keeping squid fisheries out of areas where salmon are found.

I think that Senator Murkowski's statements that the horrible record of the Japanese land-based salmon fleets not only should be brought to the attention of everyone in this Nation, but that his recommended action to diminish any nation whose boats commit those violations, to reduce their bottomfish allocations is very apt. And I know that will sound very hard to a number of individuals in this room, but you have to understand that in western Alaska in particular, the small salmon fisheries are the only income possibilities for thousands and thousands of individuals, and what you are going to do if some action is not taken is, you are going to throw all of those individuals onto the welfare rolls.

And we are trying to get people to be independent and we think that immediate action should be taken.

In addition, I would like to say that concerning the phaseout of foreign fishing and joint ventures, UFA strongly supports the original goals and purposes of the FCMA as we proceed expeditiously toward full Americanization of the EEZ. There are a number of methods for achieving full Americanization and UFA continues to review those methods. While we have not adopted any single approach as the sole method of achieving full Americanization, we welcome full debate.

It is clear to UFA that the question and timing of a phaseout of directed fishing and joint ventures operations is better determined closer to the fishing grounds. Therefore, UFA strongly believes that those issues can best be handled by the respective management councils. Because of their proximity to all segments of the fishing industry within a region, the councils are in the best possible position of judging the respective needs of those segments. Such an approach would indicate continued strong support for the council system and would require further legislative scrutiny into the questions of the eligibility for council membership and the role of NMFS.

UFA has thoroughly reviewed the language and reductions in directed foreign fishing proposed in S. 1386. It appears to us that the

phaseout schedules and percentages are not completely realistic and do not clearly lead to the goals of an expeditious phaseout of foreign fishing.

Further, to guarantee participants in foreign fishing allocations in subsequent years might not be in the Nation's best interests. Depending on the circumstances, it might be more advantageous to allocate fish to a nation that had not participated in the fishery previously.

Finally, UFA does not support the new industry forums or committees that would be created under the provision. The approach appears to exclude the council and State participation at worst, or relegate both to an ill-defined role at least.

Funding: UFA supports the approach of S. 1245 in providing separate line item funding. Further, UFA supports the highest possible funding levels in order that the councils may do their work most effectively.

Straddling stocks: UFA supports the concept of bringing fisheries which straddle internatinal boundaries under U.S. management.

I think that the pollock stocks in the central Bering Sea, in the area known as the "doughnut" are a prime example of why it is absolutely necessary to get these fish in that region under a management concept.

High seas interception of salmon—I basically have spoken to that.

And further, I would like to say—and this is not in the testimony as written—but there also must be considered as we go along a system to ensure that the developing domestic trawl fisheries are not impinging on the already fully utilized fisheries. And this is both crab stocks, salmon stocks, and halibut. And there has been, among some segments of the trawl industry in past years, a feeling that no such regulations should be brought down on them.

We had a situation where the Japanese were taking large numbers of king salmon in the Bering Sea and it took us 4 years—and eventually, with the help of the council, the Japanese agreed to a system whereby they would reduce those interceptions down to the level of 14,000 chinook salmon within 5 years. They said it would take that long to happen.

That industry, the Japanese industry, did it the first year, and they did it by basically not spending an ounce more for fuel, but they basically changed their fishing patterns, and I think it is important that the councils have the ability to make the domestic industry stay off of fully utilized stocks, because as I said, there has been some resistance in the past.

I know that my time is gone, and I basically would like to thank you. UFA will work with the committee and its staff to basically outline and further refine our goals.

Thank you very much.

[The statement follows:]

STATEMENT OF UNITED FISHERMEN OF ALASKA

I am Henry Mitchell, Executive Director of the Bering Sea Fishermen's Association and Treasurer of the United Fishermen of Alaska ("UFA"). I also serve as a member of the North Pacific Fishery Management Council. My testimony today is

on behalf of UFA, whose main offices are located at Suite 10, 319 Seward Street, Juneau, Alaska 99801-1188.

UFA is a private, non-profit, statewide organization for 16 local fishermen's associations an some 1,500 individual members, representing in toto approximately 8,000 commercial fishermen. UFA has been active on specific national fishing legislation and recently expanded its efforts at the national level to increase public awareness of the importance of commercial fishing to the nation. It is our privilege to present our thoughts today on the reauthorization of the Magnuson Fisheries Conservation Management Act ("FCMA"), and specific measures individually introduced by Senators Stevens, Gorton and Lautenberg.

Generally, UFA has been supportive of the structure and implementation of the FCMA. Management plans are being developed, councils are making difficult decisions and the various fisheries are being managed more effectively and efficiently. Major changes throughout the Act are not required, nor desirable. The management system originally contemplated by Congress required adaptation by fishermen and government alike. Much of that adaptation has been achieved. Now, during this reauthorization process, some adjustments are warranted—some general, some more localized. It is with that in mind—that adjustments rather than complete reformation is in order—that UFA approaches this hearing as the Senate addresses the reauthorization process.

In its support for a two year reauthorization, UFA presents its testimony in two parts today: (1) a response to the various measures introduced in the Senate; and (2) general comments on legislation already passed by the House Merchant Marine Committee, in order to provide the Senate with a complete record of UFA's position on the FCMA.

First, may I begin my discussion of Senate measures by congratulating Senator Stevens and his staff for their time and effort in working with UFA, the State of Alaska, the Council and other Alaska fishing interests. Senator Stevens understands the background of the FCMA and how it has aided the development of Alaska's fisheries. He also understands the problems that have arisen during this past several years of implementation of the Act, and the impacts of those problems on the fisheries in general, and specifically in Alaska. Although we have not worked directly with either Senator Gorton or Lautenberg in past, we appreciate their interest in reauthorization and look forward to working closely with them as the Congress moves toward reauthorization this year.

With regard to specific issues addressed in legislation by Senators Stevens, Gorton and Lautenberg, UFA would like to provide the following thoughts:

Phase out of foreign fishing and joint ventures: UFA strongly supports the original goals and purposes of the FCMA as we processed expeditiously toward full Americanization of the EEZ. There are a number of methods fo achieving full Americanization, and UFA continues to review those methods. While we have not adopted any single approach as "the sole method of achieving full Americanization", we welcome full debate.

It is clear to UFA that the question and timing of a phase out of directed fishing and joint ventures operations is better determined closer to the fishing grounds. Therefore, UFA strongly believes that those issues can best be handled by the respective management councils. Because of their proximity to all segments of the fishing industry within a region, the Councils are in the best possible position of judging the respective needs of those segments. Such an approach would indicate continued strong support for the Council system, and would require further legislative scrutiny into questions of the eligibility for Council membership and the role of NMFS.

UFA has thoroughly reviewed the language on reductions in directed foreign fishing proposed in S. 1386. It appears to us that the phase out schedules and percentages are not completely realistic, and do not clearly lead to the goals of an expeditious phase out of foreign fishing. Further, to guarantee participants in foreign fishing allocations in subsequent years might not be in the nation's (ours) best interest. Depending on the circumstances, it might be more advantageous to allocate fish to a nation that had not participated in the fishery previously. Finally, UFA does not support the new industry forums or committees that would be created under the provision. The approach appears to exclude Council and state participation at worst, or relegate them both to an ill-defined role at least.

Funding: UFA supports the approach of S. 1245 in providing separate line item funding for the Regional Councils on a yearly basis. That approach will reduce friction between NMFS and the Councils over funding, and will be clear recognition of the importance of the Council system, and of Councils as independent entities. Fur-

ther, UFA supports the highest possible funding levels in order that Councils may do their work most effectively.

Straddling stocks: UFA supports the concept of bringing fisheries which straddle international boundaries under U.S. management. This would be accomplished by requiring the Secretary of State to include provisions for extra-territorial management and the implementation of reciprocal fishing agreement within the GIFA's. Extension of management jurisdiction will correct existing problems whereby foreign fishermen can devastate stocks through uncontrolled fishing, to the detriment of American fishermen who comply with sound conservation practices on the American side of the 200 mile limit.

High seas interception of salmon: UFA strongly supports Senator Stevens' language requiring the Secretary of State to negotiate cessation of high seas salmon fishing on salmon of U.S. origin. At the present time, U.S. salmon stocks are being devastated by the high seas salmon fleets of Japan and the squid fisheries of Taiwan.

The United State's position on high seas salmon fishing, as formulated by the INPFC Commissioners, is that it is a destructive practice which prohibits proper management of salmon stock escapement. Interceptions of salmon by the high seas fleets result in an economic loss to the commercial, subsistence and sport fisheries of Alaska, Washington, Oregon and California.

The economic and social impacts of the salmon interceptions on the cash-poor regions of western Alaska are particularly glaring when one considers the $5,000–$6,000 per year incomes per family in these native villages. As an example, the Japanese mothership-fishery harvested over 700,000 king salmon in the Bering Sea in 1980. This was twice the entire commercial catch of western Alaska. If half of these fish had been allowed to return to their stream of origin, village fishermen would have made an additional $6-8 million—thereby doubling, or in some instances tripling, their income.

For 32 years, the Japanese have been allowed to harvest salmon which rightfully belonged to the citizens of the U.S. We thus commend the inclusion of this provision in S. 1245 and urge the Senate to include it in its FCMA reauthorization legislation in order to put an end to this destructive fishing practice.

Trade restrictions: UFA and the State of Alaska have consistently advocated FCMA amendments directed at unfair trade practices by nations with access to our fisheries. Specifically, we have supported authorizing the imposition of trade restrictions on fish products of a foreign nation harvesting fish in the U.S. EEZ if that nation imposes trade restrictions on the importation of any U.S. fish or fish products into that nation. This is an essential element of our efforts to develop markets for American-caught fish and product, as well as part of our overall effort for full Americanization of the EEZ. We strongly support the provisions of S. 1245 to that effect. As well, we support those provisions requiring an annual increase in foreign fishing fees to compensate for the true value of the fisheries resources, and as an incentive to those nations to aid in the development of strong U.S. industry.

Internal waters: UFA has strongly advocated the extension of internal waters regulations for fishing operations out to the territorial seas of Alaska. We support the jurisdiction provision of S. 1245. Such extension will provide the necessary assistance to fishermen of western Alaska who are struggling to develop commercial fisheries and who have had little success obtaining markets because of inability or unwillingness of domestic processors to purchase fish. The remaining provisions pertaining to jurisdiction are essential to correct inconsistencies created by previous amendment to the FCMA aimed at the geographical anamolies of the Alaska coastline.

UFA actively participated in the House Merchant Marine Committee reauthorization process, and would like to provide, at this point, its position on various provisions of H.R. 1533 as adopted by the Committee earlier this year:

Exclusive economic zone: UFA supports redesignation of the Fisheries Conservation Zone (FCZ) to the Exclusive Economic Zone (EEZ) to comport with Executive Proclamation 5030. As well, UFA supports the recognition of the sovereignty of the United States over all fishery resources except those species of fish that are highly migratory, such as tuna. Report language should be developed to provide further clarification of which species are "highly migratory" for the purposes of the Act.

Bilateral agreements: UFA continues to support elimination of the "basket clause" and opposes providing the Secretary of State with expanded authority to enter into long-term bilateral agreements ("fish and chips") with foreign nations. Instead, Regional Councils and annual industry negotiations are the appropriate approach. By this method, Regional Councils would have the opportunity to review the actual benefits to the industry and determine appropriate action.

Mere consultation with Regional Councils is inadequate to the proper allocation of fishing rights to foreign nations. The Regional Councils must be actively and directly involved as "partners" in the allocation process. The Act should be amended to require the concurrence of Regional Councils in foreign allocations.

Foreign fishing permits: UFA generally supports the concept of authorizing the Secretary of Commerce to approve vessel permit applications in whole or in part, and for a duration of no more than one year. With regard to H.R. 1533, UFA supports the provision that the Secretary shall impose rigorous sanctions on foreign fishing vessels or operators conducting certain unauthorized acts.

Full disclosure: UFA generally supports requirements that Council members and advisory committee members fully disclose, on the existing federal disclosure forms, any direct financial interest they may have in a fishery within the jurisdiction of the Regional Council on which they sit. Public officials in Alaska are subject to similar requirements, and no generalized hardships have been noted in these disclosure requirements. Individuals may choose not to subject themselves to such scrutiny and therefore remove themselves as Council members; that is a matter of personal choice. The public has a right to know what personal financial interest a Council member or committee member has as he makes a decision or renders advice. That far overweighs the loss to the Councils when certain individuals refuse to serve as members because of those financial disclosure requirements.

UFA respectfully suggests that H.R. 1533 does not go far enough. Council members should not be allowed to vote on a particular matter in which they have a direct financial interest unless the remainder of the Council determines that the interest would not affect the members' integrity in voting.

Confidential information. UFA favors allowing Council members access to confidential information when necessary to the Council in making a decision with regard to the preparation of plans or amendments to plans. The standard that confidential information can be released by the Secretary when he "considers that disclosure will assist the Council" does not seem to be overly restrictive. UFA does support the requirement that confidential information released by the Secretary be considered only in closed sessions and in accordance with procedures established by the Regional Councils, subject to public review. UFA suggests the committee should review the implementation of this provision to assure it is abused neither by the Councils nor the Secretary.

Habitat considerations: While it is important to conclude habitat considerations, the House provision does not go nearly far enough to assure that adequate habitat protection occurs under the Act. To that effect, NMFS' responsibility to conduct habitat research and survey work and to prepare habitat sections for inclusion in FMP's is clearly spelled out. Significant habitat issues must be included in FMP's. In essence, NMFS' habitat policy should be codified within the Act, not left as discretionary. In addition, Councils should be provided the authority to review and comment on activities that would affect sensitive habitat areas identified in FMP's.

Fish processing in state waters: The current statutory language is adequate when applied to internal waters. The existing process requires the governor to approve an application for an internal water joint venture based on the lack of capacity or lack of intent by domestic processors to meet the processing needs of the U.S. harvesters. The process has generally worked well in Alaska, and has been routinely supported by both the harvesting and processing segments of the industry. Inserting the Councils or the Secretary in the process will provide no benefit, and may actually slow down the decision-making process, to the detriment of U.S. harvesters. Bifurcating the process based on whether there is an FMP makes the process needlessly more complex.

Territorial seas off Alaska: While the existing process adequately addresses internal water joint ventures, UFA does support expanding Section 306(c) to permit joint ventures in the territorial seas off Alaska. This need arises because of certain peculiar geographical and oceanographic factors in Alaska. Because of the configuration of the coastline in certain parts of the State, it is not always possible to conduct processing operations convenient to fishing grounds in internal waters. The Act should be further amended to authorize the governor to designate locations that would be eligible for joint ventures. Only under those circumstances should joint ventures be allowed in the territorial seas.

False statements: UFA does support the concept of H.R. 1533 amendment to Section 307(1), Prohibited Acts, to include a provision on the submission of false statements concerning capacity and intent to process. Only on the basis of accurate information can a governor make sound decisions. There is an unacceptable risk to the harvesting segment of the industry if false statements are intentionally provided to a governor as he decides whether sufficient capacity exists.

Full Americanization: UFA was disappointed that the question of full Americanization of the EEZ was deleted from further consideration in H.R. 1533. While we do not currently have a solution, resolution of the issue will not ultimately be had without at least further discussion during this reauthorization process.

Limited access/dislocation compensation/fees: Certain provisions contained in the first staff draft have been correctly deleted in this measure. UFA strongly opposed the concept of providing authority to the Secretary to develop limited access management plans. UFA also strongly opposed the idea of a Federal Fisheries Dislocation Compensation Fund. Finally, in this regard, UFA opposes any alteration of the language affecting fees for domestic fishermen. UFA believes that these ideas should not resurface throughout the reauthorization process.

Further, UFA strongly opposes any efforts to expand the Secretary's authority to preempt state fisheries management. The current limit on Secretarial authority to preempt to fisheries predominantly harvested in the EEZ is the proper delineation between state and federal management authority. The Merchant Marine Committee's preemption provision is woefully deficient on due process ground, and is vastly overboard in allowing preemption in state waters. UFA and the State of Alaska are currently negotiating with NMFS and the House Committee to resolve the many problems created by the preemption approach of H.R. 1533. A number of Councils are on record, as well, in total opposition to the House provision. The best approach is to delete the House provision and retain existing law.

Council composition/eligibility: The initial staff draft included several provisions altering the composition and eligibility of council members. UFA believes only minor changes need to be made with regard to composition, and supports deletion of the initial staff proposals both on consolidation of councils and a new methodology for establishing the members of at-large seats. However, UFA did support the requirement that Council members be both "knowledgeable" and "experienced" and that at least 50% of appointments to the Council should be made from among individuals whose primary vocation was in a segment of the commercial fishing industry. Composition and eligibility are appropriate topics for consideration in the reauthorization process at least two years hence.

UFA does propose one change in the area of Council composition, however. The Act should be amended to redesignate the seat held by the NMFS Regional Director as a non-voting seat, to be replaced by an at-large seat representing industry. Clearly, NMFS' participation throughout the Council process is invaluable. However, it must be recognized that other non-voting members of the various Councils have in reality influenced Council decision-making through their participation in Council deliberations. The Regional Director would still have this opportunity. Since the Secretary already has "veto" authority over FMP's, providing him a vote on the Council through the NMFS Regional Director's seat is at best duplicative.

UFA appreciates this opportunity to testify on reauthorization of the FCMA, and would be pleased to provide any further information to this Committee. We look foward to working with you as you develop substantive reauthorization legislation this year.

Senator STEVENS. Thank you very much.

The problems of the closures up there in northwest Alaska are very acute. I have heard about that. As a matter of fact, I had not heard about the Japanese pressure until just 2 or 3 days ago. That does seem to me to be a most difficult problem.

I am constrained to ask if that herring fishery has anything to do with the depletion of our salmon stocks along that Northwest coast.

Mr. MITCHELL. Senator Stevens, I do not believe that the herring fishery has any impact at all in that regard. In terms of the Kuskokwim River, I think that large numbers of those chum salmon are being taken by high seas gillnet fleets, both of Japan, the bandit fleets of Taiwan under the guise of squid fisheries. There are still indications from sources that we have in Japan that a number of the Japanese squid fleet do range to the north and to the east of their respective areas and are taking still substantial numbers of salmon.

Many of the chum salmon and silver salmon and king salmon that return to the streams in western Alaska are found in these North Pacific waters and Bering Sea. The amounts of salmon reported by the land-based fleets of Japan in any given year through IMPFC are probably but a third of what the land-based fleet takes.

Three weeks ago we had a situation where the land-based fleets were once again over the line. They are out there. You know, it is difficult to find them. When they do find them, it is difficult to spot them because of cloud cover. They do this every year.

In 1982 when we went to the IMPFC meeting in Tokyo, we gave them all the pictures of all their boats. It is the same pattern. They go out there, they cover up their boats with tarps, they fish 400, 500, sometimes 1,000 miles east of the line. They are fishing on all the stocks returning to western Alaska and central Alaska, British Columbia, Oregon, and Washington. And I do not think that the—first of all, the herring resource—and I should have said this—the herring resource is increasing.

You know, it was devastated by basically the unlimited fishing by the Japanese in the 1960's and early 1970's and that resource is starting to come back to historical levels. But we have got to get a handle on all the different types of interceptions that there are, and some of those interceptions are high seas foreign interceptions and some are developing as the domestic drag fleet develops. There are going to be interception problems there.

And the council needs the tools and it needs the support of all segments of the industry to ensure the best possible plans to get those fish back to their respective streams, and yet to allow for the domestic development of the bottom fishery. This is important.

You know, a lot of people say, well, you salmon fishermen, you are just trying to impede the development of the bottom fishery. We think it is important. We think that there are opportunities for the western Alaska villages, you know. We see a possibility of maybe developing a small mosquito fleet of small skiffs to develop to a processor where you would have 35 or 36 small fleets. These would be income opportunities for our people. I mean it may be 5 or 6 years away, but they are interested in trying to get into this bottom fishery thing, too. Unfortunately, they would not have the capital to go out and buy a large trawler.

Senator STEVENS. We will stop right there.

Mr. MITCHELL. Thank you.

Senator STEVENS. Thank you very much. We appreciate your coming.

I would hope, Jim, that we can keep in close touch with the regional councils as this bill continues because, obviously, they are going to adminster a great portion of it, if it does pass.

Mr. CAMPBELL. Thank you. You have our full cooperation.

Just one comment I might add. In my business, I find it very difficult to plan beyond 3 years; 5 years is completely impossible. If we can set goals and move toward them—but to legislate them somehow bothers me.

Senator STEVENS. Well, there is building a consensus for some compromise to deal with 2 or 3 years and see what happens in those years, and if it does not work, we will close the gate.

But I do think that it is going to take some time to work this out, and it is going to be essential that the regional council be part of that process if it is going to work properly.

We will recess until 2 o'clock.

[Recess.]

AFTERNOON SESSION

Senator STEVENS. We now have panel No. 4. Before we start that, Mr. Mitchell has submitted a brief on various aspects of the bills that are pending before the committee. We will put that in the record unless there is an objection.

Panel No. 4 is Robert Martin, chairman of the Mid-Atlantic Fisheries Management Council; Eldon Greenberg, Southeast Fisheries Association; Rudolph Rosen of the National Wildlife Federation; Zeke Grader, the Fishermen's Solidarity of Mendocino, CA; and Bart Fisher, a partner in Patton, Boggs, and Blow.

Now, gentlemen, do you have an order in which you have agreed to proceed?

There is one more there than I have read, by the way.

Mr. MARTIN. That is John Bryson, Executive Director, Mid-Atlantic Fisheries Management Council.

Senator STEVENS. All right, thank you.

Any objection to the way I read them, proceeding in that fashion?

Very well, Mr. Martin?

STATEMENTS OF ROBERT MARTIN, CHAIRMAN, MID-ATLANTIC FISHERIES MANAGEMENT COUNCIL, ACCOMPANIED BY JOHN BRYSON, EXECUTIVE DIRECTOR, MID-ATLANTIC FISHERIES MANAGEMENT COUNCIL; AND ELDON GREENBERG, SOUTHEAST FISHERIES ASSOCIATION; RUDOLPH ROSEN, NATIONAL WILDLIFE FEDERATION; W.F. "ZEKE" GRADER, JR., EXECUTIVE DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS; BART S. FISHER, PARTNER, PATTON, BOGGS & BLOW

Mr. MARTIN. Thank you, Senator. It is a pleasure to be here.

I have the distinct privilege of representing the eight regional council chairmen. I should say that with Mr. Jim Campbell representing the North Pacific as chairman, the absence of the other chairmen is not from lack of interest in the affairs of the Senate and your efforts in reviewing the Magnuson Act. We are planning a meeting next week in Seattle beginning on Monday, and we are preparing on that, one of the specific goals being to review the present status of the reauthorization process.

As a result of the reauthorization process, the Council chairmen for the last 8 to 10 months have, in fact, been meeting and at a time initially when it appeared that all comments were negative as to the Council system, I believe the Council chairmen found that we had very little differences between ourselves, a lot in common, common problems that, I think, we all share the same view that the philosophy and the concept of regional fisheries management is a viable concept, and we support the objectives and goals of the Magnuson Act.

We do believe with the 8 years of experience, there can be some fine tuning or possible clarification or interpretation of congressional intent.

One of the things that the chairmen have found in meeting and discussing their common problems is the belief that we need to, as was said before the House committee, we need to be plugged in to the process if we are to be effective in our efforts. The proposals that we have submitted to the Senate, both in commenting upon Senator Gorton's, Senator Stevens', and Senator Lautenberg's bills are offered in the spirit of trying to make the Council system more effective and efficient.

We have heard that some are concerned that we are trying to overstep our bounds, increase our jurisdiction and powers, and we wish to assure you that as far as the Council chairmen are concerned, that is not the intent.

In February of this year Council chairmen met with acting Administrator Dr. Anthony Calio, and we accepted the challenge from Dr. Calio based upon our request to be accountable for our conduct and actions. As Assistant Administrator Gordon said this morning, the Council, the Councils are participating in a joint Council-NOAA Task Group Study which is reviewing the implementation, accomplishments and goals of the act. We expect to have our recommendations, and we expect them to be thorough recommendations by the beginning of next year.

Senator STEVENS. Will that be a process that all of you participate in, all regional Councils?

Mr. MARTIN. There are two. I had the good fortune of being one of the members of the task force. Senator John Green from the Gulf Coast and Mr. Dick Rowe from the Service are the leaders of the task group, and we have in fact over the last few months requested individual Councils to review various questions and decisions which must be made on that. We are right now gathering base data, and we hope to come up with our recommendations late this fall.

We appreciate, Senator Stevens, your comments that the Councils are here to stay. We also believe that they should stay. We also appreciate your reaffirmation of the congressional intent that the Councils are independent entities. We value that relationship, and we think it is a valid position if we are to manage a common resource.

I would like to just briefly touch on some of the items in our written testimony. As I said, we have provided written comment on the three Senate bills presently before the committee and also upon recommendations that the Council chairs believe should be looked at as far as the total review of the act.

On highly migratory species, under the Senate bill 747, I should say when I first became involved in Council affairs I was told that you can talk about bringing tuna under the jurisdiction of the act, but do not really say it too loud, you will never get anyplace with it.

I think the Council members, at least certainly on the east coast, are pleased to see Senator Lautenberg's provision whereby tuna is brought in the jurisdiction of the act. We are concerned that the exclusion of tuna places a disproportionate burden on U.S. fisher-

men, and I want to give one example. The Senator may know, at present there is an FMP, a Fisheries Management Plan, before the Secretary for approval dealing with swordfish. There are problems with that plan. One of the problems has been raised by the State Department where it has expressed its concern that there is an excessive burden on foreign tuna longliners, thereby denying foreign longliners a reasonable opportunity to fish for tuna. This has to do with a nighttime longlining prohibition, a cap on swordfish, and a closure in the south Atlantic.

The council chairmen would request that the concern should be the excessive burden on domestic fishermen, and it should be a reasonable opportunity for our fishermen to fish for tuna. We believe that is consistent with your provisions that deal with the straddle stocks. Certainly when you are talking about shark or the other pelagics, we are talking about fish who do not necessarily follow the 200-mile zone.

If I may, Senator, very quickly, confidentiality of data. We are only looking for it to go to our staff members. We are not looking for it to the council members. It is the staff members who need to know that information in order to prepare and advise the council members.

Foreign fishing phaseout, we have said right along at least on the Atlantic coast we believe that any time line, any deadline will in fact become an obstruction to the development of certain underutilized species; namely, mackerel. We believe that the butterfish development, certainly the squid development are fine examples of allowing the councils to phase in. There is no question, should be no question of the councils' intent that there will be an eventual phaseout of foreign fishing, but we want to be able to get the best bargain we can for our own fishermen before they are phased out, and we are concerned that a deadline will thwart those efforts.

One final comment on reauthorization. We support Senator Lautenberg in his 5-year reauthorization. We are concerned that in the 2-year period there may be a lack of continuity, and we think it is important that we go at a minimum of 4 years, and should there be any need for fine tuning under the act, that it could be done, and we have so committed ourselves to Dr. Calio within a 2-year period. But for the sake of the fisheries, for the sake of the fishermen, we believe that continuity requires longer than a 2-year period.

Thank you, sir.

[The statement follows:]

STATEMENT OF ROBERT MARTIN, CHAIRMAN, MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Mr. Chairman, members of the Committee, I am Robert Martin, Chairman of the Mid-Atlantic Fishery Management Council, speaking today on behalf of the Chairmen of the eight Fishery Management Councils. Mr. Campbell of the North Pacific Council has commented on items of particular concern to his Council.

We appreciate the opportunity to testify on the reauthorization of the FCMA. The testimony I am providing represents the position of the Council Chairmen and most of the Councils.

Regarding S.1245 and S.1386, Section 3, "Straddling Stock", we assume this pertains to West Coast fisheries. Is there a potential conflict with this definition and highly migratory species?

We support S.747 in the deletion from the Act of the exclusion clause for highly migratory species. This position is not motivated by a desire to expand our areas of authority to cover species highly migratory in nature but by our concern that the exclusion of tunas place a disproportionate burden on U.S. fishermen for conservation of managed species that are heavily impacted by foreign tuna vessels.

As an alternative, we suggest the following language be added to the end of Section 103, which currently exempts highly migratory species for management: "unless the taking of the highly migratory species within the Exclusive Conservation Zone results in excessive bycatch of managed species or would place a disporportionate burden on U.S. fishermen for the conservation of a managed species. The Secretary shall consider the recommendation of the appropriate Council or Councils in making this decision."

We are aware that the current U.S. policy supports international management of these resources. We are not asking for reversal of this policy, but only amendments of it where tuna fishing in our waters adversely affects U.S. fishermen, as in the Gulf, Atlantic and Western Pacific. For example, resumption of the level of Japanese tuna fishing effort that occurred in the late 1970s and early 1980s in the Gulf and Atlantic would result in significant bycatches of billfish and swordfish, which are currently overfished. It would also result in declines in the availability and abundance of billfish for our fishermen as a result of bycatch mortality, which is more than 60 percent for blue marlin. If we are to effectively manage those species under the Council's jurisdiction, we must be able to minimize all fishing activities which negatively impact on the managed species.

The foreign fishing phase out provision in S.1386 apparently does not apply to Council areas where the TALFF to a specific nation is less than 65,000 mt. Is that correct?

We oppose phase outs, either timed or monetary, as proposed in S.1245. The Councils oppose the phase out provisions proposed in S.1386, 201(d) and the mandatory phase out proposed in 204(b)(10) by S.1245 to the extent they would impact the Atlantic Coast. These measures are not necessary and as proposed will result in loss of shoreside and joint venture sales by East Coast fishermen. The mackerel fishery of the Northwest Atlantic needs the participation of foreign nations to develop. There is an approximate 600,000 mt world market for the Atlantic mackerel. Most of that amount is harvested in Eastern Atlantic waters.

There has been a recent down trend in the Eastern Atlantic stocks that has resulted in our being able to sell to joint venture and limited shoreside produced product in conjunction with a directed fishery (TALFF). The joint ventures and shoreside purchases are the result of Council's policies and pressure applied to purchase in exchange for TALFF. The bulk of these come at a time of the year when our fishermen most need the income (late winter, early spring). There are mechanisms that can effectively be used to reduce TALFF. We have set low OYs in order to encourage the foreign nations to comply with the Mid-Atlantic and New England Council's policy on joint ventures and purchases. We have increased sales by withholding product from directed fisheries until purchase commitments were made. We now have markets for our butterfish, which was once largely a directed foreign fishery. We have brought squid to the point that we can produce quality products for sale and no longer must depend on the granting of large TALFFs to stimulate sales. In fact, this product should not require future TALFFs in order for us to sell into the traditional European markets. The mackerel fishery, however, still needs assistance and will require fish and chips concepts to assist our fishermen in utilizing this fishery. We have increased the stocks from approximately 200,000 mt in 1977 to over 1,000,000 mt in 1984, while increasing our participation in the world market. We must retain the present flexibility on TALFF and fish and chips if we are to expect future sales from this fishery.

We do not opose reasonable increases in foreign fishing fees, only those that would have the effect of a phase out, as is the case in Section 204.b.(10) of S.1245. We agree with the testimony of Jim Campbell to the use of any increased fee, that is that the increased revenues be used to support fishery management.

We feel the creation of reserves, in Section 201(d)(4)(A) of S.1386, with guidelines to be allocated to US harvesters on the basis of shoreside landed product or joint venture product is dangerous. The harvesters who have commented to us feel this would make them subservant to the processors as to price paid, etc. since the fish would be specified for that purpose only. Who is to divide the fleets between joint venture and shoreside deliveries? On the other hand, joint ventures should not interfere with demonstrated shoreside capability if we are to realize the maximum return for our stocks.

The shoreside operation should have all the product it can handle. Is 50% or 60% enough?

We support the changes on observer coverage proposed in S.747 to Section 201(i) and 204(b). It is certainly reasonable to require adequate space and safe conditions for an observer. We agree that 100% observer coverage is necessary.

The Councils do not support the bilateral agreement provision referred to in either S.1245 or S.1386. **If these measures are to be made part of the Magnuson Act they should contain the provision for "concurrence by the appropriate Council", as well as by the Secretary.** We need to assure that the State Department officials confer with the Councils on joint ventures before granting allocations. A number of Councils are attempting to work out long-term joint venture policies which benefit our fishermen. Unfortunately, these policies are not always considered by State Department representatives.

We support the language in S.1386 on the "basket clause" which would apply to Section 201(e)(1)(E)(viii).

We support the change to 201(e)(1)(E)(viii) proposed by S.1386 or the following language: "(viii) such other matters as the Secretary of State, in cooperation with the Secretary, and after conferring with appropriate Fishery Management Council or Councils, deems appropriate."

The S.747 proposal regarding vessel safety in Section 301(a)(6) is, in our opinion, unnecessary as the Councils are considering vessel safety in their plans. We do not object, however, to the change.

S.747, in changes to Section 302(b)(2)(A)(2) and particularly those proposed by the House Committee, could create a greater problem since current membership seems to be more the result of interpretations and political maneuvering rather than non-compliance with the Act. If the strict balance implied in the House Committee's recommendation become law, it will probably require more than one round of nominations from the Governors to achieve such a balance. Are the States to be notified that it is their turn to nominate a recreational fisherman or commercial harvester or conservationist? This could upset the current distribution of at large members, which may prove to be of a greater concern than the specific qualification of the individual representing a state. Where does a commercial user fit in under the House version?

We support the intent of the changes to Section 303(a)(5) to resolve the current problems of Councils not receiving adequate data due to the interpretation and policies of the Secretary under Section 303(d).

Another approach would be to amend 303(d) to read: "CONFIDENTIALITY OF STATISTICS. Any statistics submitted to the Secretary by any person in compliance with any requirement under Subsection (a)(5) shall be confidential and shall not be disclosed except to those NMFS personnel and Council employees responsible for plan development and monitoring or when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Any release of aggregated statistics by Council staff shall be cleared with the appropriate NMFS Data Base Administrator."

We support the intent of S.747 to include a habitat section in fishery management plans. We believe some changes are necessary, however. We suggest Section 303(f)(2) be changed to read: "(2) **When existing plans are amended the habitat requirement shall apply.**"

It would be very expensive to modify all present plans and the gain would be minimal since very little factual data exists at the present time.

Section 303(f)(3) should have a period after the word habitat. The section would then read: **"The Secretary may not disapprove a management plan which contains incomplete information on a habitat".**

In the case of proposed federal agency action, a response 60 days after receipt of Council recommendations may be after the final action was taken, therefore, timely response is necessary. The habitat section should not be used as a basis for plan rejection. Some states have expressed concern that strict application of this section in internal waters could be pre-emptive. We would prefer Section 303(f)(6) require a timely response (not to exceed 45 days) rather than the 60 days on line 22 of S.747.

We support the change proposed in S.747 to establish a vessel dislocation program. We feel that **interstate fisheries commissions** should be added to 303(g)(1).

S.747 proposes to change Section 308(a) of the MFCMA to limit the authority of the Secretary to assess a final civil penalty greater than that first assessed by written notice. We do not support this measure. The Secretary's increase would be as a result of a hearing before an Administrative Law Judge after an opportunity for all facts of the case to be fully considered. An appeal may be made to District Court.

We support the longer term of the authorizations as proposed in S.747, but feel the increasing amounts contained in S.1245 are more appropriate. We would suggest that $69,000,000 be provided for FY 1986 with at least $7,500,000 for the operation of the Councils. The appropriation should increase annually as the cost of living increases. The Councils have been handicapped by the level funding received in the recent past in that they have had to suffer reductions in staff with, in many instances, increases in workload; reductions in the number of Council, Advisory Panel, Scientific and Statistical Committee, and various species Committees meetings, as well as other pertinent meetings arranged by others but which would be beneficial to the fisheries if the Councils were able to participate; all of which has resulted in some delay in the production of plans and a general slow-down of the Council planning process.

We feel that reauthorization should be at least four years rather than two years due to the fact that a task force effort between NOAA and the Councils has just been initiated to review the present law, policies, and practices and make recommendations for changes. A longer reauthorization would not preclude technical amendments to the Act from being enacted at any time such amendment appears useful. U.S. fishermen are placed at a disadvantage in developing their plans when they are unsure what fisheries policies are to be in the near future. Reauthorization for the extended period provides the fishing constituency with some degree of assurance that the system will be in existence for that period and allows them to make the business decisions or investments necessary to better utilize our fishery resources. A shorter reauthorization period, we feel, will raise concerns in the financial community over the advisability of committing capital for such fisheries development. Additionally, reauthorization within a two year period necessarily requires the involvement of Council time and expense that diverts the Councils from their mandated tasks under the Act. A four to five year reauthorization would provide greater efficiency and continuity in fisheries management, plan development, and plan monitoring.

S.1245 addresses part of the problem by requiring that the President's budget include a specific statement as to the amount obligated or expended in the most recently completed fiscal year. The Councils believe it would be more appropriate that the Council funds are made a line item in the budget and, therefore, not subject to change or after the fact reporting.

We would also like to take this opportunity to comment on other issues the Council Chairmen feel should be addressed in the reauthorization legislation in order to permit the Councils to better accomplish their responsibilities under the Act. The Council Chairmen suggested changes are in bold print.

The Councils believe it would be of great benefit to the Council system to include language under Section 2 of the FCMA setting forth Congressional intent on the respective roles of the Councils and DOC/NOAA/NMFS. From previous Congressional oversight reports we understand that we are independent entities with specifically designed tasks and responsibilities. Unfortunately, administrative interpretation of the Act continues to put us into a subordinate or advisory role to DOC. The recent Inspector General Draft Reports (October, 1985 and February, 1985) are prime examples of such interpretation.

Many of the Councils have become deeply involved in joint ventures. Foreign fishing in our waters is of grave concern to most U.S. fishermen. We, therefore, request consideration of the following changes in that regard:

Change 201(e)(1)(A) to read: "The Secretary of State, in cooperation with the Secretary, **and after conferring with the appropriate Council or Councils** shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States."

201(e)(1)(D)(iii) to read: **"(iii) if it is consistent with permit conditions imposed by the Secretary in support of Council recommendations in relation to an allocation as part of a joint venture."**

We recommend the following changes to Section 204 of FCMA:

Change 204(a)(2) to read: "Forms. The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating **and the appropriate Fishery Management Councils where joint ventures are to be considered,** shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application."

Change 204(b)(6)(A) to read: "After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State, **the appropriate fishery management councils,** and with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, **in whole or in part** and subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirement of this Act."

Change 204(b)(7)(F) to read: "(F) Any other condition and restriction that the Secretary prescribes as necessary and appropriate **for carrying out the purposes of policy of this Act."**

Change 204(b)(9) to read: "(9) Disapproval of Applications. If the Secretary does not approve **an application, or any part of an application** submitted by a foreign nation under this subsection, he shall promply inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefore. Such foreign nation, after taking into consideration the reasons for the disapproval, may submit a revised application under this subsection.

Our first suggestion is to insure that the Secretary consults with the appropriate Council in developing permit application forms for foreign nationals engaged in joint ventures to assure we get those data necessary to monitor this fishing activity and assess the potential for better joint venture trade-offs. We similarly feel the appropriate Councils should be conferred with prior to approval of permits, since we are closely monitoring the foreign fishery activity and its impact on domestic fishermen.

We recommend the following language be inserted at the end of 205(a)(1) which provides for import prohibitions: **"or (C) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for species traditionally harvested off that nation by United States vessels, if a surplus of that species exists beyond the harvest capacity of that nation, or (D) refuses to allow U.S. (owned) vessels to fish for species, for which there is a surplus greater than the harvest capacity of that nation, under joint ventures with its nationals;"**

We feel that such language in the import prohibition section would help in renegotiating entry of U.S. vessels into Latin American or other fisheries, where they have traditionally fished and where a surplus obviously exists.

We recommend the following changes to subsection 302(f):

Change 302(f)(1) to read: "Each Council may appoint, and assign duties to, an executive director and such other full- and part-time employees as the Councils determines are necessary to the performance of its functions."

Add to beginning of subparagraphs 302(f)(3) and 302(f)(4): **"Upon the request of any Council".**

Add to end of 302(f)(5): **, including catch data.**

The first of these proposed changes is related to our interpretation of Congressional oversight reports that the Councils are independent entities from Department of Commerce and are to be staffed by nonfederal employees. We feel that we have acted responsibly in establishing our staffs by numbers and by discipline, and that the Councils should not be staffed by NMFS employees, unless by concurrence with the affected Council. We, therefore, have proposed these amendments which would resolve this issue and relieve us of the continual DOC audit comments to the contrary. The third change was suggested to assure that we get the data related to foreign catches, which has often been denied us due to confidentiality or that, upon occasion, we must get from the foreign nation. 302(f)(7) should be changed if the Councils are granted an independent or semi-independent status. In that event, subsection (7) should be modified to provide that "Each Council shall pay", etc.

Subparagraph 302(g)(3) should be changed to read: "18 U.S.C. Section 208 shall not apply to the Councils, or to the scientific and statistical committees or to the advisory panels of the Councils."

Subparagraph 302(h)(1) should be changed to read: prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that the Council determines is in need of conservation and management, and, from time to time, such amendments to each such plan as are necessary;

We recommend the addition of a new subparagraph 302(h)(7) to read: "(7) if it determines that it is appropriate, comment on or make recommendations concerning any activity by any person or group or by any state or Federal agency that directly or indirectly impacts upon any fishery resource for which the Council has responsibility. Within 45 days of receiving such comment or recommendations the head of any Federal agency shall respond to the Council fully and in detail, stating how such comment or recommendation will be addressed, including plans for mitigation for losses resulting from an adverse action that effects a fishery managed under a FMP."

We would also suggest that language should be inserted that will make the NOAA General Counsel opinion on conflict of interest apply to Council members, Scientific and Statistical Committee members and Advisory Panel members.

We feel the following amended language to subparagraph 302(i)(3)(A) would beneficial:

"(3)(A) Each Council, Scientific and Statistical Committee, and Advisory Panel

(i) shall close any meeting, or portion thereof, that concerns

(I) matters or information that bears a national security classification; or

(II) confidential statistics released by the Secretary under section 303(d); and"

We recommend changes to Section 303(b) providing for discretional provisions of fishery management plans as follows:

Change 303(b)(1) to read: "require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any person or fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone; "for Secretary prepared plans Council concurrence on permit and fee provisions is required."

Add a new subparagraph to 303(b) to read: "require the collection of information by utilizing on board scientific technicians, in lieu of submission of data by the vessel owner pursuant to section 303(a)(5), provided the vessel can accommodate housing the technician in the crew's quarters. The technician shall not be responsible for compliance monitoring or enforcement, and information collected would be confidential pursuant to section 303(d). (Comment: A problem exists with the liability that can be incurred by a vessel in carrying the observer. This must be addressed and will most likely require changes to the Jones Act.)"

We recommend that fishery management plans be allowed to permit persons as well as vessels because in some fisheries, vessels are not used (e.g. pound nets or fish traps off oil rigs) and in some fisheries, the permittee hires different vessels at different times (e.g., pharmaceutical companies harvesting coral). We feel that the Councils should concur with permit and fee requirements of fishery management plans regulating domestic fishermen prepared by the Secretary before they are implemented in order to allow maximum public participation in that decision.

We would also suggest a new subparagraph 303(e)(2) to read: **"If the Secretary determines that it is more cost effective and efficient to combine the data reporting requirements of various fishery management plans, or that such action would result in better and more standardized collection of information, or that such action would reduce the reporting burden on fishermen, the Secretary may prepare a generic data collection plan. In the preparation of such plan, the Secretary may include data requirements for fisheries that he anticipates may require management, as well as for fisheries managed under fishery management plans. The Secretary shall confer with the affected Councils and states in the development of the plan, or may request the Councils to develop the plan. Plans may include a requirement for permits pursuant to section 303(b)(1), with concurrence of the affected Councils. Approval of plans and implementing regulations shall be pursuant to the provisions of sections 304(a) and (b) of sections 305(c), (g), and (h)."**

It is suggested that the following language be added to the end of subparagraph 304(e): **"The Laboratory Directors of National Marine Fisheries Service shall confer with the Councils annually in order to incorporate this fishery research into the laboratory programs and budgets."**

Some Regional Directors have cast a dissenting vote when a unanimous vote is required for initiation of emergency actions by a Council, not on the issue, but to retain the Secretary's option to take independent action, therefore, the following changes are recommended:

> Change 305(e)(2)(A) to read: "(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, **with the exception of the Regional Director,** requests the taking of such action; and"
>
> Change 305(e)(2)(B) to read: "(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, **with the exception of the Regional Director,** requests the taking of such action."

We suggest a new subparagraph 305(f) to read: **"(f) ACTIONS BY NOTICE. Fishery management plans may contain procedures for adjusting management provisions by the Secretary by Notice in the Federal Register. Such procedures may be utilized for modifying fishing seasons, fishing zones, total allowable catch levels, quotas, mesh sizes, other gear limitations, limits on catches by vessels or fishermen, and other measures required to prevent overfishing or to achieve optimum yield. Regulations proposed by the Secretary under such procedures for fishery management plans implemented under paragraph (c) of this section shall be published in the Federal Register for public review and shall not be subject to approval under the provisions of the National Environmental Protection Act (16 U.S.C.), the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Coastal Zone Management Act (16 U.S.C.), the Marine Mammal Protection Act (16 U.S.C. 1362), and the Executive Order 12291 if the provisions of the procedure were previously approved under this applicable law during implementation."**

We also recommend a new subparagraph 305(i) to read: **"(i) Exclusion from Certain Laws. The fishery management plans are exempted from compliance with the provisions of the National Environmental Protection Act (16 U.S.C.) in that the plan provisions do not alter the environment in a detrimental manner and public review and comment is provided for under this Act."**

In complying with provisions of FCMA, the Executive Orders and other applicable law, we satisfy the requirements of NEPA including the public participation and notice, specification of impacts and alternatives, and other requirements related to human environment. Fishery management plans do not alter the physical environment in a detrimental way and usually benefit the ecosystem.

We feel a new section 313 would be beneficial. Said section to be as follows: "SECTION 313. CONSERVATION AND MANAGEMENT FUND. There shall be established a fund entitled the conservation and management fund into which shall be transferred funds from penalties assessed by the Secretary or by any court of the United States for offenses under sections 308 and 309 and proceeds from civil forfeitures under section 310. The Secretary is authorized to utilize the fund for purposes of:

"(A) enforcing the provisions of fishery management plans;

"(B) providing administrative and programmatic support for Councils in developing, monitoring, and operating fishery management plans; and

"(C) research and data collection in support of fishery management plans.

We feel that Section 401 could be deleted in its entirety. The remaining sections could then be renumbered accordingly.

Again, we appreciate this opportunity to comment on the reauthorization of the FCMA and to put forth our suggestions for technical amendments that we feel will be of great benefit in improving the management process under the Act. We appreciate the interest you have shown in U.S. fishermen and solicit your continue support.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. According to your testimony, the Councils support efforts to include tuna in the management act, citing bycatch and other problems. In the case of the Western Pacific region, however, it is my understanding that there is insufficient data and information regarding the bycatch situation to really ascertain the scope of the problem. Wouldn't it make more sense, especially considering the delicate nature of the ongoing international tuna licensing negotiations in the Pacific, to more fully investigate the bycatch situation in the region before bringing tuna under a management plan?

Answer. The Council Chairmen recognize that complete removal of the section 103 exemption of highly migratory species is not realistic considering the delicate nature of the ongoing international tuna licensing negotiations. For this reason, the Council Chairmen have proposed a preferred alternative amendment to section 103 as follows: Section 103. Highly Migratory Species. The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish. ", unless the taking of the highly migratory species within the exclusive conservation zone results in excessive bycatch of managed species or would place a disproportionate burden on US fishermen for the conservation of a managed species. The Secretary shall consider the recommendation of the appropriate Council or Councils in making this decision."

This alternative provides the Councils with the necessary framework to carry out its management responsibilities to non-highly migratory species (i.e., pelagics), without interfering with the spirit and objectives of international tuna negotiations. By necessity, this preferred alternative amendment requires complete analysis of the bycatch data and information in order to determine any disproportionate burden on US fishermen.

Senator STEVENS. We will hold questions until we get through the whole panel, and hopefully my colleague will be off the phone by that time.

Mr. Greenberg.

Mr. GREENBERG. Thank you, Mr. Chairman.

My name is Eldon Greenberg. I am here this afternoon representing Southeastern Fisheries Association, which is the largest commercial fisheries trade association in the Southeastern United States.

I would like briefly to address four issues in my testimony which are important to the Southeast, a region, I might add, that repre-

sents more than 26 percent of the value and 36 percent of the volume of all fish landed in the United States.

Let me turn first to the future of foreign fishing. The phase-down and phaseout of foreign fishing has received much discussion today. In the Southeast there is no directed foreign fishing, nor are there any joint ventures. Consequently, our interest in the phaseout is limited, and we certainly do not oppose it. Nonetheless, an absolute foreign fishing phaseout in all regions does carry with it possible negative implications for efforts to renew bilateral fishing relationships in Latin America and the Caribbean.

As you are aware, fishermen in the Southeast used to fish very heavily in Mexican waters, as well as in other areas of the Caribbean and Latin America. However, there has been no fishing off the east coast of Mexico since December 1981. There is today a strong interest in securing access once again to some of the Mexican fisheries, and recently we have made substantial progress in informal discussions with the Mexican industry and the Mexican Government. I think there is a real possibility of developing some joint ventures which would allow United States fishermen once again into some Mexican waters on the east coast.

I am concerned that an absolute phaseout without some exception for allowing foreign fishing in the United States zone where there is a fishing-for-fishing arrangement that could be worked out, would be counterproductive to our efforts to develop a new arrangement with Mexico. The Mexicans have some interest in some species which are currently underutilized in our zone, and if there are real benefits to our people in getting into Mexico, in turn it might make sense to allow the Mexicans something in the United States EEZ.

So we would favor a limited exception to any general exclusionary rule where a reciprocal fishing arrangement can be established with a foreign country.

Second, we are deeply concerned about council composition and the council appointment process. In our judgment, the situation in the Southeast as regards commercial representation on the councils is deplorable. We believe some immediate changes are required to rectify that situation.

To take just one example, the State of Florida is the center of much of the fishing activity in the Southeast. Yet today there is not a single representative of the commercial fishing industry from Florida on either the South Atlantic Council or on the Gulf Council. There were some excellent candidates proposed this year by the State of Florida. None was accepted in the recent round of appointments made on June 27.

In light of the continuing inadequate representation, we would suggest two changes, first a change in section 302 requiring that a majority of council members be from the industry, and second, a requirement that council members be both knowledgeable and experienced. While neither of those proposals is a panacaea to our problems, we think they would at least move in the direction of alleviating them.

Third, we think it is appropriate to give a boost to habitat conservation through legislation. In the southeast, maintenance of a productive fisheries habitat is essential to the growth of the com-

mercial fishing industry. Over 90 percent of the commercial resources in this region are estuarine-dependent. Consequently, we very much favor the concept embodied in Senator Lautenberg's bill which would give the councils an ability to comment on State and Federal activities and which would provide for the inclusion of habitat-related information in FMP's. Our only caveat is we not go too far in this direction and elevate the council's concerns over and above the concerns of other Federal agencies, thus risking bogging down the fishing management process in litigation and controversy.

The final issue I would like to address is the State-Federal relationship in fisheries management. That relationship has been increasingly troubled in the Southeast in recent years. I will skip over the history of the past conflicts and just note that today we are facing potential Draconian limitations on commercial fishing activities in State waters in a number of gulf coast States. The Florida Marine Fisheries Commission, for example, is considering measures which could lead to closing all Florida's waters to virtually all net fishing. In our judgment, such measures would radically interfere with the effectiveness of FMP regulations.

Consequently, we would favor changes in the preemption provisions of the Magnuson Act currently found in section 306(b) to eliminate the requirement that a fishery be predominantly in the FCZ in order for a preemption to occur, and to eliminate the requirement for an ALJ hearing.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions when the time comes.

[The statement follows:]

STATEMENT OF ELDON V.C. GREENBERG ON BEHALF OF SOUTHEASTERN FISHERIES ASSOCIATION, INC.

Good morning. I am Eldon V.C. Greenberg, a partner in the Washington, D.C. law firm of Galloway & Greenberg. I am pleased to appear before you today to present the views of the Southeastern Fisheries Association, Inc. ("SFA") concerning various proposed amendments to the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 18091, *et seq.* (the "MFCMA"), including S. 747, S. 1245 and S. 1386 (collectively, the "Bills").

SFA, which is headquartered in Tallahassee, Florida, is the largest commercial fisheries trade association in the Southeastern United States. It has more than four hundred members from all sectors of the commercial fishing industry from North Carolina to Texas. Most, if not all, of SFA's members are deeply concerned with and involved in the management process under the MFCMA. Thus, SFA has the strongest interest in proposed amendments to the law.

SFA is pleased that the Committee has already adopted legislation, S. 958, which would reauthorize the MFCMA through the fiscal year 1987. Reauthorization of this statute is essential, in our judgment, to the health and long-term growth and prosperity of the fishing industry in the Southeastern United States.

We are also pleased that the Committee is now in the process of considering possible amendments to the MFCMA. While SFA's experience with the MFCMA has generally been positive, and while SFA does not see a need for a major overhaul of the statute or any radical rethinking of the basic management regime, we believe that some limited fine-tuning can improve its operation.

We recognize that the primary focus of the Bills pending before the Committee, especially S. 1245 and S. 1386, is foreign fishing. Since foreign fishing is not a major issue in the Gulf and South Atlantic, I would like just to touch briefly on the implications of any "phase-out" for Southeastern fisheries. In the remainder of my testimony, I will then focus on three of the leading concerns in the Southeast, namely, Council composition and the Council appointment process, habitat protection and the preemptive authority of the federal government.

1. The future of foreign fishing in the fishery conservation zone: The phase-down and phase-out of foreign fishing in the Fishery Conservation Zone (the "FCZ")—the major focus of S. 1386 and also a part of S. 1245—will undoubtedly be debated at length before this Committee. In the Southeast, there is no directed foreign fishing, nor are there at this time any joint ventures. Consequently, SFA's interest in the phase-down and phase-out of foreign fishing is limited. Nonetheless, an absolute foreign fishing phase-out in all regions, as proposed in S. 1386, does carry with it possible negative implications for efforts to renew bilateral fishing relationships in Latin America and the Caribbean which may be highly beneficial to the U.S. industry. There is, therefore, in our judgement, a need to carve out a limited exception to any general exclusion of foreign fishing.[1]

As the Committee is aware, until the establishment of exclusive zones for the management of fisheries in the mid-1970s, hundreds of U.S. fishermen, particularly shrimpers, fished in waters off Mexico and other Latin American nations at various times of the year. By the end of 1979, however, U.S. shrimp fishermen were phased entirely out of Mexican waters, and other U.S. fishing activities in the Mexican Gulf were terminated at the end of December, 1981. Similar actions occurred in other fishing areas, *i.e.*, the Bahamas, Cuba.

In the Southeast, there is strong interest not just in securing access once again to at least some Mexican fisheries, but also possibly to other areas where U.S. fishermen have traditionally fished. Recently, some progress in renewing a fisheries relationship with Mexico on its East Coast has been made. At a meeting chaired by SFA in Tampa, Florida on June 14, 1985, top Mexican fishery officials indicated an interest in exploring possible fishing joint ventures in Mexican waters for rock shrimp, snapper/grouper and mullet. We are now following up on this meeting. Plainly, we hope that there will be no legislative action jeopardizing the prospects for renewed fishing arrangements.

An absolute phase-out imposed by the United States could hinder efforts to develop such arrangements, by eliminating the opportunity, for example, for a "fishing-for-fishing" trade. SFA would thus urge that an exception be made to any general exclusionary rule where a reciprocal fishing arrangement, or other arrangement allowing fishing in foreign zones, can be established.[2] Such an exception is fully consistent with the "fish and chips" policy now embodied in the MFCMA. It also would seem consistent with Section 3 of S. 1245, calling for inclusion in Governing International Fishery Agreements ("GIFAs") of a "provision for implementing a policy of reciprocity in fishing as set forth in Section 201(g)" of the MFCMA.[3]

2. *Council composition and the council appointment process:* SFA recognizes that the National Marine Fisheries Service ("NMFS") and the Regional Fishery Management Councils (the "Councils") have embarked upon a two year study of the operation of the entire Council management system under the MFCMA, and, as a consequence, there is an argument that, at this time, Congress should only consider limited modifications, if any, to the Council system. However, the situation in the Southeast as regards commercial representation on the Councils is intolerable, and we believe that some immediate changes are required.

The commercial fisheries of the Southeastern United States represent a significant proportion of the entire U.S. fisheries economy. In 1983, for example, landings in the Gulf of Mexico accounted for 37 percent of the volume and 26 percent of the value of all U.S. fisheries. The current value of such fisheries is close to $6 billion. The State of Florida is the center of much of this activity, especially in terms of processing. Yet today there is not a single representative of the commercial fishing industry from Florida on either the Gulf of Mexico or the South Atlantic Council. At the same time, with the exception of one member from the menhaden industry, which is not under management, there is no representation of the commercial finfish industry from any state in the Gulf on the Gulf of Mexico Council. This situation makes no sense and, indeed, is directly contrary to the intent of the framers of the MFCMA that the people most affected by resource management would have a major voice in determining what resource management measures would be adopted.

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[1] If the phase-out only involves North Pacific fisheries, as is proposed by S. 1245, then, it should be noted, an exception would not be required to satisfy SFA's interest.

[2] In this context, it might be noted that H.R. 1533, approved by the House Merchant Marine and Fisheries Committee on May 8, 1985, while not speaking to the phase-out issue, recognizes (in Section 3) the importance of considering reciprocal fishing arrangements in developing bilateral agreements on foreign fishing.

[3] Indeed, this amendment to the MFCMA may well be helpful in future negotiations with Mexico, which does not now have a GIFA with the United States but which may wish to obtain access to some underutilized U.S. stocks, *i.e.*, shark and red hake in the Gulf of Mexico.

This year, we had hoped to see some changes in the composition of the Gulf and South Atlantic Councils. Yet, although there were excellent candidates with strong backgrounds in the commercial fishing industry nominated by the State of Florida, none was selected in the round of appointments announced June 27. I am attaching at Tab A a letter to Secretary of Commerce Baldrige from Robert P. Jones, Executive Director of SFA, protesting this year's appointments.

In light of the continuing inadequate representation of the industry on the Gulf and South Atlantic Councils, SFA would make two suggestions for change:

(1) SFA would support a change to Section 302 which would require that "a majority of the appointees must be individuals each of whose primary vocation is within either the harvesting, processing or marketing sector of the commercial fishing industry." Such a change is necessary to ensure that appointments adequately reflect the interests of the commercial fishing industry and that a balance which has been missing in recent years be restored to the Councils.

(2) SFA would support a second amendment to Section 302 of the MFCMA which would require that an individual be "knowledgeable *and* experienced with regard to conservation and management of recreational or commercial fishery resources" (emphasis added).[4] At present, there are now individuals on the Gulf and South Atlantic Councils who lack either one or the other.[5]

3. Habitat conservation: Maintenance of a productive fisheries habitat is essential to the growth of the commerical fishing industry in the Southeastern United States. Over 90 percent of the commercial resources in this region are estuarine-dependent. If there is degradation of habitat, there is likely to be a decline in the overall productivity of the Gulf and South Atlantic fisheries. It is for these reasons that SFA supported the adoption, in November, 1983, of a Habitat Conservation Policy by NMFS and has vigorously opposed budget cuts affecting NMFS habitat protection capabilities. By the same token, SFA believes that it is appropriate and desirable for the law to recognize (a) the ability of the Councils to comment on activities undertaken by state or federal agencies which may affect fisheries habitat and (b) the need to include, if possible, information regarding the significance of habitat in Fishery Management Plans ("FMPs").[6]

I would add only one caveat to these recommendations for change. Modification in the MFCMA should not go too far in elevating the Council's habitat conservation concerns vis-a-vis the activities of other federal or state agencies. While such changes may be appealing philosophically, they could pose practical problems if actually adopted, slowing down and perhaps even immobilizing the review and approval of FMPs. The MFCMA works, in part, because of the limited number of constituencies (basically the fishing community) affected by the management process. Overly expanding the universe of affected constituents could well be counterproductive to fisheries management interests in the long-term. For these reasons, we prefer the somewhat more general language in H.R. 1533 to that in S. 747.

4. Preemption of state authority: The final issue which I wish to address this morning is the state-federal relationship in fisheries management. This relationship has become increasingly troubled in the Southeast, where recreational and commercial interests often find themselves pitted against each other and where the states often seem to be the vehicle of choice for imposition of ill-conceived and restrictive fishing measures.

Over the past several years, there has been extensive controversy concerning Florida's efforts to apply its landing laws and territorial sea management measures to FCZ fishing under regulations implementing an approved FMP. For the moment, this problem appears to be largely resolved. However, today further, draconian limitations on commercial fishing activities in state waters are being proposed. The Florida Marine Fisheries Commission, for example, is considering measures which could lead to closing all Florida waters to virtually all net fishing, with limited exceptions for such species as shrimp and mullet. Actions of this sort could radically interfere with the effectiveness of FMP regulations currently in place for finfish fisheries off the coast of Florida and directly raise questions concerning the need for preemption.

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[4] Such a change is reflected in Section 6(a)(1)(A) of H.R. 1533 as adopted by the House Merchant Marine and Fisheries Committee and is found in Section 7(1) of S. 747.

[5] SFA would further support a change in the law, such as that embodied in Section 6(a)(1)(B) of H.R. 1533, which would require consultation by a Governor "with representatives of the commercial and recreational fishing interests of the state" prior to submitting the names of individuals to the Secretary of Commerce for appointment.

[6] These changes would be made by Section 9 of S. 747 and are found in Sections 6(b) and 7(a) of H.R. 1533.

The preemption provisions now found in Section 306(b) of the MFCMA are cumbersome and potentially time-consuming. Extensive factual disputes, for example, over whether a fishery is or is not "predominately" in the FCZ could well complicate and unduly delay a preemption proceeding in the Southeast. SFA would thus support a change in the law to make it easier to preempt state authority, by eliminating a requirement that a fishery be "predominately" in the FCZ for the Secretary to exercise such authority. This provision would help promote state action consistent with approved plans, particularly in critical in-shore fisheries in the Gulf and South Atlantic region, such as mackerel or snapper/grouper, where management conflicts have arisen in the past. In addition, SFA believes it would be desirable to eliminate some of the onerous procedural requirements for preemption, especially the need for a full adjudicatory hearing before an Administrative Law Judge. In practice, these hearings have largely proved to be irrelevant. Instead, the Secretary of Commerce should be vested with authority to act by regulation to preempt.

CONCLUSION

Mr. Chairman and members of the Committee, that concludes my prepared statement. Thank you again for the opportunity to appear before you today. I would be most happy to answer any questions that you may have.

Senator STEVENS. Thank you. I do have a question for you, but I will wait until afterwards also.

Mr. Rosen?

Mr. ROSEN. Senators Stevens and Gorton, my name is Rudolph Rosen, and I am speaking on behalf of the National Wildlife Federation.

Today I am discussing a specific proposal that would amend the Fishery Conservation and Management Act to strengthen the Federal fishery manager's hand in addressing critical habitat requirements for fisheries under Federal management. Our written comments provide detailed explanation about our proposal as well as address certain provisions of S. 747, a bill authored by Senator Lautenberg.

We believe that FCMA must recognize that good Federal fishery management requires good fishery habitat management by all Federal agencies. Currently the FCMA does not provide Federal fishery managers a clear role in addessing habitat concerns for the fisheries that they manage. The act does not even give the councils a mandate to consider habitat requirements for a fishery when planning management of that fishery, and without such a mandate, it is no wonder that other Federal agencies can ignore what the councils, and even the Marine Fisheries Service have to say about habitat needed for continued production of Federal fisheries.

FCMA should provide congressional recognition of the councils' role in habitat conservation and make clear the great national significance of federally managed fisheries.

For over 1 year we have engaged in extensive discussion with fishery managers and users throughout the Nation on how such goals could be realized. Today we present a package of suggestions that has been endorsed wholly or in part by many organizations, including the Regional Fishery Management Councils, the three State marine fishery commissions, the Marine Fisheries Advisory Committee, and the International Association of Fish and Wildlife Agencies. The proposal to amend the act is listed in our written comments.

The basis of the proposal is twofold: First, to ensure that fishery production requirements are addressed in fishery management

plans, we urge that you put into the act those parts of the National Marine Fisheries Services habitat conservation policy adopted in November 1983 that pertain to the councils and FCMA; and second, we want to make sure that habitat information included in fishery management plans is recognized as important.

Our proposal would ensure that Federal actions fully take into account fisheries under Federal management. Essentially, we are simply making a good Government argument. Effective management of fisheries requires effective habitat management, and that should mean that one Federal agency should not be engaged in an activity that would undo the activities of another Federal agency.

Our proposal simply would enhance the authority of Federal fishery managers, making their authority commensurate with their responsibility under current Federal programs that address impacts on fishery habitat.

S. 747 addresses many of our concerns about habitat of federally managed fish. Provisions in the bill would codify the NMFS habitat conservation policy and thus ensure that the councils address production requirements of the fisheries in management plans where it makes sense to do so. Primary responsibility for data collection, research, and data analysis would be assigned to the Marine Fisheries Service. The provisions would require the Marine Fisheries Service to focus its habitat activities on fishery management needs. We would further suggest that NMFS supply information already collected by other Federal and State agencies and others to address these fishery management needs. Thus, habitat amendments would help focus limited resources and gain maximum usage out of current and past expenditure of research dollars.

According to S. 747, where data on habitat are unavailable for a fishery, then that unavailability should not be allowed to impede secretarial adoption of a fishery management plan. Instead, we suggest that inadequacies in the habitat data base should trigger research and survey efforts by NMFS and cooperative efforts with the States, efforts that are targeted to fishery management needs.

S. 747 also provides language that would enhance Federal interagency cooperation on fishery management planning. These additions would obligate all Federal agencies to evaluate the effects of their activities on approved fishery management plans. Where federally managed fisheries could be adversely affected by activities of a Federal agency, S. 747 simply would require that any comments by the Secretary of Commerce be given full consideration in the agency's plans. Language we suggest would empower the Secretary of Commerce to mandate changes in Federal activities if necessary to protect the federally managed fishery.

Current law vests de facto veto authority over fishery management plans in any Federal agency whose activities decrease productivity of a federally managed fishery. The Marine Fisheries Service already reviews and comments on such activities. When a federally managed fishery would be affected adversely, our proposal gives the Marine Fisheries Service greater authority to prevent or mitigate for adverse effects.

Admittedly the actions of the Federal Government are not the only cause of harm to fisheries under Federal management, but the Federal Government should be a leader not a follower in protecting

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our national investment in fisheries and fishery habitat, especially where such habitat is required for production of fisheries under Federal management. Provisions in S. 747 would help achieve that goal.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RUDOLPH A. ROSEN, NATIONAL WILDLIFE FEDERATION

Mr. Chairman, my name is Rudolph Rosen and I am a fisheries resource specialist for the National Wildlife Federation (NWF). The NWF is pleased to present our views on reauthorizing and amending the Fishery Conservation and Management Act (FCMA), P.L. 94-265.

The NWF is the nation's largest, not-for-profit, conservation-education organization with 4.5 million members and supporters throughout the U.S. and in 52 state- and territory-wide organizations which themselves comprise about 6,000 local conservation organizations. Angler and commercial fishing groups are included among our affiliated organizations. In addition, since the mid-1970s we have supported the U.S. right to extended jurisdiction over our living marine resources and have participated in the affairs of the Regional Councils established by the FCMA. We are committed to ensuring continued conservation and scientific managment of our living marine resources.

We commend your efforts on behalf of fishery resources and urge you to work toward improvement of the important legislation being considered today. Our testimony includes general comments in FCMA and S. 747 (a bill authored by Sen. Lautenberg), and an overview of a proposal we offer to amend FCMA. We also provide two appendices that detail our proposal and address the national need to conserve habitat necessary for fishery production.

INTRODUCTION

Although NWF strongly supports the concepts of FCMA, we also recognize the limitations of the Act: Fishery management plan implementation has seemed to drag on, conflicts between Regional Fishery Management Council members with divergent interests have persisted, limited funding and uncertainty over future funding have created stress, and so on. Nonetheless, management throughout the range of a species or stock has been achieved for many fisheries. And, given the slow progress of various interstate fishery management plans, the Councils have implemented their management plans in a reasonable time period. Indeed, we now see the Council process coalescing despite tremendous pressure by special interests to go back to the "free-for-all" system of fishery management that existed before FCMA. For example, we are encouraged by the Council's unity on amending the FCMA. We encourage giving these fishery managers more say in the process of managing the fishery, however, we do have several specific concerns.

The FCMA should, but unfortunately does not, provide the Councils with Congressional authority to address several important aspects of fishery management. There is a critical need for fishery management planning to address habitat requirements of the fishery and for federal fishery managers to have a significant level of control over activities, especially federal activities, that affect production of federally managed fisheries (see attached NWF resolution).

We are not alone in our concern over the lack of a national program to maintain production of managed species. In July 1982 the National Advisory Committee on Oceans and the Atmosphere identified a National Goal of "providing for more effective fishery management and conservation" (National Ocean Goals and Objectives for the 1980s Fisheries for the Future: Restructuring the Government-Industry Partnership). To meet this goal three objectives were recognized, one of which was "to improve the system for protecting and enhancing the aquatic habitat essential to propagation and maintenance of fishery stocks." The Committee justified its position by stating that "[p]rotection of the habitat, including coastal waters and the estuaries, is an important part of U.S National Policy . . . yet, commercial and recreational fisheries are being damaged by degradation and loss of essential habitat, and a stronger, more focused system must be developed to afford better protection to this part of the aquatic environment."

The need to turn national attention to maintaining or enhancing fishery habitat to protect fisheries and fishermen has been the focus of recent attention by the media. For example, the April 1985 issue of National Fishermen examined serious

wetlands loss in Louisiana, North Carolina, California, and Texas. And in October 1984, the magazine focused attention on other habitat loss and degradation problems affecting fisheries—logging in Alaska, dams in Oregon, pollution in Chesapeake Bay, and filling of Florida bays. For example, the October report cites conflicts between fisheries and cutting public timber on national forests in the Kadashan drainage—a top pink salmon producing area in southeast Alaska. High volume cutting planned for the Tongas National Forest causes worry for other fishing groups such as the Regional Fish and Game Advisory Council. In Oregon, the magazine highlighted the Federal Energy Regulatory Commission's stand against providing fishery protection measures at a dam on the North Umpqua River which produces a salmon fishery valued at $14.5 million annually. National Fisherman reports show fisheries being lost due to pollution and destruction of coastal fish habitat. Habitat loss reduces the fishery and the number of fishermen who use it—the economic implications are obvious. Even more alarming is the lack of control over habitat loss by federal and state fishery managers, fishermen, and others interested in fishery conservation and management.

The multitude of proposals to amend the Act are ample evidence that citizens interested in marine fisheries are concerned about the Act and want to improve it. A simple reauthorization of FCMA, without substantive amendments, would exacerbate the frustration many of us feel about the unrealized potential for the Act to truly conserve and manage our offshore fisheries.

AMENDMENTS PROPOSED FOR FCMA

The FCMA must recognize that good federal fishery management requires good habitat management by all federal agencies. At present, FCMA provides the Councils and National Marine Fisheries Service (NMFS) no clear direction or authority in addressing habitat concerns for fisheries.

We recommend amending FCMA to provide Congressional recognition of the Councils' role in habitat and make that mean something.

The basis of our proposal is two-fold. First, we want to ensure that the production requirements of fisheries are addressed in fishery management plans. To this end, we urge that Congress put into the Act those parts of the Habitat Conservation Policy recently adopted by NMFS (November 1983) that pertain to the Councils and thus ensure that fishery management plans address habitat and other production requirements of fisheries under federal management.

And second, we want to make sure that this "habitat" information in plans is recognized as important. Our proposal seeks to ensure that federal actions do not jeopardize fisheries under federal management. Essentially we are making a good-government argument. Effective management of fisheries requires effective habitat management and that should mean that one federal agency should not be engaged in an activity that would jeopardize or preempt the mission of another federal agency.

Enactment of our proposal would not change or add to any ongoing state or federal programs. It would increase the authority of federal fishery managers, who already have the responsibility, to protect federally managed fisheries from potentially adverse activities conducted by other federal agencies, such as dam licensing and ocean dumping of wastes.

Specifically, we suggest that Congress require that fishery management plans include information on the life requirements of the fishery by adding to the Act a new series of "required plan contents." These changes would codify the NMFS Habitat Conservation Policy. According to the NMFS policy, all habitat data required for management plans will be provided by NMFS. We would like to see Congress confirm that NMFS is responsible for providing the Councils data on habitat.

Where data on habitat are unavailable for a fishery, then that unavailability should not be allowed to impede Secretarial adoption of a management plan. Instead, we hope that inadequacies in the habitat data base will trigger increased survey and research efforts by NMFS and cooperative efforts with the states—research targeted to fishery management needs.

Next, we suggest adding language to FCMA that would require federal intra- and inter-agency cooperation on fishery management planning. We envision such additions obligating all federal agencies to evaluate the effects of their activities on approved fishery management plans where fisheries could be affected adversely. The language we suggest would empower the Secretary of Commerce to mandate changes, for example, to permits issued for dredge and fill activities by the U.S. Army Corps of Engineers, if the proposed activity would affect the fishery under federal management. The NMFS already reviews permits for such activities. Where

a fishery would be affected adversely, our proposal gives NMFS greater authority to mitigate for or reduce adverse affects.

And last, we suggest that Congress clarify the citizen's right to file suit against the government for non-enforcement of provisions of FCMA. We do no propose a means to impede plan development. We want only to ensure that once a plan is adopted, provisions of the law are enforced.

Congress has not provided the Councils responsibility to provide habitat information in fishery management plans. At present, information on a fish's habitat is not afforded any particular significance by federal agencies making decisions that affect habitat.

In some instances where federal fisheries management has been jeopardized by threats to fish habitat, Councils have taken action. The Gulf Council, in particular, expends considerable effort in addressing threats to fisheries they manage. They have done so even though their actions and opinions have no more significance under existing statutes than do opinions expressed by private individuals.

Congress never intended that the Councils advise the government on its federal permits and development actions. The Council's job is to develop fishery management plans. We have no argument with Councils that wish to comment on federal development actions. We believe our proposal offers an alternative and less burdensome means to influence federal decisions on habitat for fish under federal management.

We suggest that Congress confirm that fisheries under federal management are a subset of fish and wildlife of extraordinary significance to the nation—all federal agencies conducting activities that affect fisheries habitat should have an affirmative duty to take into account the effects of their actions on federally-approved fishery management plans. We need the connection made in the statutory language of the Act to make it work. These concepts underlie our proposal.

In addition, it is important that in those instances in which Councils include information on a fishery's production requirements, the Councils utilize existing information and scientific capabilities of the NMFS and thus insure 1) that duplicative programs are not established, and 2) that Councils are not burdened with additional staffing or financial needs.

All federal agencies must give greater attention to production requirements of federally managed fisheries. The FCMA is the nation's only legislation that provides for the conservation and management of marine fisheries, yet it gives no increased authority to fishery managers in maintaining or enhancing fish producing habitat—incredible as it may seem other federal agencies can take actions that may affect fisheries habitat or the federal management of fisheries, regardless of the concerns of the federal fishery managers. Fishery agencies have no effective recourse to mitigate or avert habitat damage that might affect fisheries, and without some control over fish production, a fishery "manager" cannot manage a fishery.

Our "habitat" amendments were developed through consultation with the Regional Councils, state agencies, the Marine Fisheries Advisory Committee, fishermen organizations, conservation groups, and numerous individuals knowledgeable in marine fishery management. The proposals that follow are not drafted as statutory language but as concepts worded carefully in "plain" English (further explanation of the proposals is provided elsewhere in our comments):

PROPOSED AMENDMENTS TO FCMA

1. Regional Fishery Management Councils should address habitat needed for production of a fishery, and, where appropriate, its food-base or other essential resources in Fishery Management Plans. This change would codify the National Marine Fisheries Services (NMFS), habitat policy adopted 25 November 1983.

(a) In Fishery Management Plans, the Regional Councils should identify and discuss to the extent possible for the fishery (and, where appropriate, its food-base), (1) current and probable future habitat conditions, (2) life requirements and habitat important to production, and (3) measures or actions to conserve, restore, or enhance habitat essential to production.

(b) Incomplete information on habitat in a Fishery Management Plan due to data unavailability or uncertainty of analysis should not constitute a criterion for disapproval of a Fishery Management Plan by the Secretary.

(c) The NMFS should have responsibility to provide Councils all habitat information needed for inclusion in Fishery Management Plans. Such responsibility should include, but not be limited to, providing research, survey work, cooperating with other Federal agencies and the States in gathering information, data compilation and analysis, and initial draft documents. Council staff should serve, at a maximum,

as the liaison between the NMFS habitat programs and the Council, and as final reviewers of habitat information to ensure, at a minimum, consistency in format of habitat information in Fishery Management Plans (the NMFS habitat policy identifies the role of NMFS in providing the Councils information to fulfill habitat requirements of Fishery Management Plans).

(d) The NMFS should be responsive to the Council's needs for further data collection or analysis to address habitat needs for fisheries, especially where adequate data are unavailable. (Fulfillment of this requirement could result in redirection of existing habitat research and assessment programs to ensure that such programs more closely fit fishery management needs.)

(e) Regional Council requests to the Secretary of Commerce and other Federal officials for information on habitat needed for fishery management plans should be responded to by the individuals to whom the request was made within a set and reasonable period. When such requests cannot be met within that period, the Secretary and other Federal officials should provide the Council an explanation of the reasons why the request can not be met, or provide a time table, which should include a description of tasks, for addressing the request.

2. The effect of Federal activities on federally approved Fishery Management Plans should be considered and accounted and/or mitigated for in an affirmative manner by the Federal agency carrying out, funding, or authorizing the activity.

(a) Where it is determined that a proposed Federal action or activity would impact adversely a fishery under Federal management, then the Federal agency proposing the activity should be required to mitigate the effects of that activity. Mitigation should be undertaken at the same time as the proposed activity to assure immediated protection for the fishery.

(b) The Secretary of Commerce (Administrator of the Act) should be empowered to ensure that all Federal agencies follow the requirements of paragraph a (above), and where a Federal agency refuses to mitigate its activities to protect federally managed fisheries from significant harm, the Secretary should have authority to condition the Federal agency's actions to ensure protection of the federally managed fishery.

(c) The NMFS should be responsible for reviewing activities of Federal agencies that would affect habitat of fisheries under Federal management (already an ongoing NMFS activity). Such review should not be a responsibility of Regional Councils.

(d) If a Regional Council wishes to comment on a Federal activity that would affect a fishery managed by the Council, then any recommendations made by the Council to the Secretary of Commerce and other Federal officials should be responded to by those individuals within a set and reasonable period. If such recommendations are not followed, a detailed explanation of the reasons why such recommendations were not followed should be provided to the Council by the Secretary or other Federal official to whom the recommendations were made.

3. The citizen's right to file suit and recover attorney fees under the Act should be clarified.

COMMENTS ON S. 747

S. 747 includes amendments to FCMA on habitat conservation that we endorse. The bill would help fishery managers conserve fishery habitat where the activities of federal agencies are thought to cause habitat damage that would affect federally managed fisheries. Admittedly, the actions of the federal government are not the only cause of harm to fisheries under federal management. But we must ensure the federal government is a leader, not a follower, in protecting fishery habitat and our national investment in fishery management. S. 747 would accomplish that goal.

First, S. 747 would ensure that the Councils address fishery habitat in fishery management plans where it makes sense to do so. In addition, the bill clearly places the burden for collecting information about habitat on the federal fishery science agencies. The resources of the federal fishery agencies would be concentrated on gathering information relevant to fishery management needs and providing it to the Councils. Where budgets are low, this would place federal effort (and money) where it is needed most, on fishery management.

Second, the bill ensures that habitat information in fishery management plans is recognized as important and that federally managed fisheries are a national priority. The bill would take existing interagency consultation programs and enhance them. The result would be to help ensure that federal actions do not jeopardize fisheries under federal management and that fishermen are protected in the federal government's decision-making process. These activities would not affect fishery management plan implementation or enforcement. The bill simply would require

federal development agencies to more fully consider the views of the Councils and the Secretary in decisions affecting fishery habitat.

We support the provisions of S. 747 on habitat and urge you to ensure that any bill that would amend FCMA include these or similar provisions.

However, we encourage expanding the provisions of S. 747 to provide the Secretary of Commerce a stronger role in protecting the fishery and federal management plan as detailed elsewhere in our comments.

In addition, we suggest adding language that would clarify and simplify the citizen's right to file suit against the government for non-enforcement of provisions of FCMA or fishery management plans. These provisions also are detailed elsewhere in our comments.

[The following information was subsequently received for the record:]

NATIONAL WILDLIFE FEDERATION,
Washington, DC, August 30, 1985.

Senator JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: This letter is written in response to a question asked by Sen. Frank Lautenberg for the record of the 23 July hearing on reauthorization of the Magnuson Fishery Conservation and Management Act. Sen. Lautenberg's question is repeated below:

> "NOAA's testimony says that the agency does not feel that amending the Magnuson Act to include habitat considerations is necessary because the agency has adopted a habitat policy. Do you agree with this position?"

My response to the question is no, I do not agree with that position. And, simple examination of the National Marine Fisheries Service's (NMFS) Habitat Conservation Policy would lead anyone to draw the same conclusion. The policy deals only with matters internal to NMFS and thus provides only internal recommendations with respect to the actions of the Regional Fishery Management Councils and contents of fishery management plans. On the other hand, the legislative proposal offered by Sen. Lautenberg (S. 747) would codify the policy insuring follow through on the policy's provisions and mandating that *all* federal agencies recognize fully the actions taken by and concerns of the Regional Councils with respect to habitat of fisheries under federal management. The following discussion more fully explains my position.

On matters pertaining to the Regional Councils and fishery management plans, the policy provides only a recommended course of action. Since its enactment in November 1983, the policy has established an improved working relationship between the Councils and the NMFS's Habitat Research and Conservation Programs. In addition, it has provided the Councils a recommendation to include information on production (habitat) requirements of a fishery in management plans for that fishery and specifies how NMFS will assist in that process. But, the policy is strictly a recommended course of action with significance only within the limited context of Council and NMFS internal activities. And, even internally, because the policy does not carry the endorsement of Congress, it can be changed or ignored by the Councils (and NMFS) with little or no accountability.

The greatest limitation of the policy is that it is an *internal* policy of the NMFS. Thus, no other federal agency need concern itself with efforts by the NMFS and Councils under provisions of the policy, even though activities that affect federally managed fisheries are conducted or authorized by numerous federal agencies.

Sen. Lautenberg's bill includes numerous provisions that clearly are designed to insure the policy is implemented fully and actions taken by the Councils, as a result of following the policy, are taken seriously by all federal agencies—S. 747 would make the policy work for fisheries. For example, the policy and current law grant the Councils no authority (discretionary or otherwise) to take action on concerns they might have as fishery managers about the impact a *federal* activity might have on habitat needed for fishery production. S. 747 would empower each Council to comment to any federal agency on activities proposed that would impact on fisheries managed by the Council. Furthermore, the federal agency receiving such comments and recommendations would be obligated to give those comments and recommendations full consideration in their review of the activity and also respond to the Council in a reasonable period explaining the agency's decisions regarding the concerns of the Council. Each federal agency also would be under obligation to fully consider information provided by the Councils in fishery management plans on

habitat (as specified by S. 747) in assessing and accounting for the impacts of activities that might affect the federally managed fishery.

Especially puzzling about the position taken by NOAA at the 23 July hearing (i.e., that the proposed legislation to amend FCMA was not needed) is that their position is in direct contradiction to recent actions by the NMFS on habitat planning. Section 9(b) of Sen. Lautenberg's bill would provide for a "regional habitat planning and coordination process." Apparently NOAA considers this legislative proposal unnecessary. Yet over the course of the last year or so, the NMFS has been advocating creating just such a planning process through legislation. They have made presentations before numerous groups and agencies, including the International Association of Fish and Wildlife Agencies, Natural Resources Council of America, and the U.S. Fish and Wildlife Service. In short, the NMFS is proposing legislation that "would require the eight Regional Fishery Management Councils to prepare integrated habitat management programs for their respective areas of jurisdiction." The only substantive difference between S. 747 and the legislative proposal by NMFS is that S. 747 would assign responsibility for habitat planning to the Secretary of Commerce while the NMFS proposal would assign that responsibility to the Regional Councils.

Amendments proposed in S. 747 would make it impossible for any federal agency to ignore the Councils' management plans and the impacts of federal agency actions on federally managed fisheries—the NMFS policy does none of this. Nor does the policy change the fact that the FCMA, our only federal law governing management of marine fisheries, virtually is silent on the role of either the Councils or NMFS in conserving the habitat and other production requirements of fisheries under their management.

Sincerely,

RUDOLPH A. ROSEN, PH.D.,
Fisheries Resource Specialist,
Fisheries and Wildlife Division.

Senator STEVENS. Thank you, Mr. Rosen.

Mr. Grader.

Mr. GRADER. Thank you, Senator Stevens, Senator Gorton. My name is Zeke Grader, and I am the executive director for the Pacific Coast Federation of Fishermen's Associations. Our organization represents some 22 different commercial fishermen's organizations in California and Oregon with offices in Sausalito, CA.

As you are probably aware, there has been a great deal of dissatisfaction on the Pacific coast in the States of California, Oregon, and Washington for the past several years with the implementation of the Magnuson Act and with the operations of the Pacific Fishery Management Council.

As a result of this dissatisfaction, a conference was held last October in the small community of Trinidad, CA, among representatives from the Pacific coast fishing industry in the three States to attempt to identify those problems that the industry was facing as a result of the implementation of the Magnuson Act and the operations of the Pacific Council, and also to come up with and suggest solutions to those problems, mindful that this year would be a reauthorization year for the Magnuson Act.

Out of that conference a coalition was formed of sport and commercial fishermen, fish processors, representatives from local governments and and the support industry for the fishing industry from California, Oregon, and Washington under the banner of Fishermen's Solidarity. Throughout most of last winter, meetings were held along the Pacific coast to hammer out what type of changes this coalition would like to see or felt were necessary in the Magnuson Act that would be beneficial to the fishing industry.

The two issues that came out where Solidarity felt that there were definite changes needed, and I should say changes this year,

in the Magnuson Act were those in the areas of representation on the councils and also in the area of habitat.

I think Mr. Greenberg to my right here has already talked about some of the problems of representation and the council appointments that they have been facing on the gulf coast. Well, certainly the same has been true on the Pacific Council. There fishermen have felt left out of the process as college professors, retired bureaucrats, insurance agents, Department of Energy officials, and others have been named to the councils when those with the knowledge and experience who could greatly contribute to council deliberations have been left off. That is, those who depend on the fisheries were left off.

A good example, of course, was the appointment of a salmon troller. Since it was established in 1977, the Pacific Council has probably expended about 80 percent of its efforts on the salmon fishery, and in that fishery probably no one group has been more singularly regulated than commercial salmon trollers. However, until 1 month ago there had never been one salmon troller appointed to that council despite the fact that on virtually every list the Governor of California submitted included the names of qualified salmon trollers, and there were names of salmon trollers as well on some of the lists submitted from the Governors of Oregon and Washington.

Now, as I stated in my written testimony, I think this problem has been taken care of, at least this particular user group has been taken care of in this last round of appointments, but it should not have taken this long, and I do not think it should have taken Congress continually beating on Commerce to get this done. It should have happened probably in 1977 or 1978, not in 1985.

So I think something needs to be done, and I think part of the solution is perhaps found in the language, I know it is in the House version now that certainly I think the members of Solidarity are satisfied with, specifically that requiring those appointed to be both knowledgeable and experienced, not "or" but making it "and," and second, that there be a fair apportionment of the active participants or their representatives involved in the fishery under council jurisdiction, in other words, the "no dilettantes" clause, that is, having people that have an interest in the fishery be appointed.

I think finally, within the language of the suggested changes under section 302 should be a requirement that the Governors consult with the fishing industry prior to submitting their nominees to the Department of Commerce. Recently, in California, we did get a State law passed requiring that, but there has never been any requirement in the Federal statutes, and I am happy to see such a requirement in at least the House version in H.R. 1533. I would hope it would be included in the Senate version as well, a requirement that the Governors must consult with the fishing industry before submitting the nominees to the Secretary of Commerce.

Finally, in the area of fisheries habitat, I think there was a recognition by Solidarity that habitat had to be addressed in the fishery management plans and should be recognized in the act itself. Mr. Greenberg has given an example of the 90 percent of the fisheries that are affected in the gulf coast. Well, in California alone, in the salmon fishery, which is under an FMP, the central valley

had some 6,000 miles of spawning habitat for salmon historically. By the mid-1970's that had been reduced to less than 500 miles. The effect of habitat destruction on the fishery is clear. I think it is only right that the councils be required to include available habitat information in their FMP's, and second, that they get a timely response on their comments or questions to other Federal agencies regarding habitat concerns.

Thank you.

[The statement follows:]

STATEMENT OF W.F. "ZEKE" GRADER, JR., EXECUTIVE DIRECTOR, PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS

Mr. Chairman, member of the committee, thank you for the opportunity to testify here today on legislation to amend the Magnuson Fishery Conservation & Management Act of 1976.

My name is Zeke Grader. I am the executive director of the Pacific Coast Federation of Fishermen's Associations (PCFFA). PCFFA is made up of 22 commercial fishermen's organizations in California and Oregon, representing fishermen involved in such fisheries as salmon, crab, shrimp, halibut, swordfish, shark, albacore, rockfish, sablefish, sea cucumbers and herring. PCFFA also represents fishermen using a variety of fishing gear types including troll lines, long-lines, traps, gill and trammel nets, and trawl and seine nets.

I am familiar with the Magnuson Act which was passed shortly after PCFFA was organized. Many of PCFFA's member associations worked for the passage of a 200 mile fishing zone because of their concern over the need to control the harvest of foreign fishing fleets operating along the U.S. Pacific coast. In fact, California fishermen helped convince former California Congressman Robert Leggett, who then served as chairman of the House Subcommittee on Fisheries & Wildlife Conservation and the Environment, of the need for a 200 mile fishing zone.

Until this past year, I served as a member of the Pacific Fishery Management Council's Salmon Advisory Subpanel. I also served on other Pacific Council committees and have attended most council meetings since the Pacific Council was formed nine years ago.

My remarks here today will focus on two issues important to west coast fishermen in any amendments to the Magnuson Act in this year of reauthorization. I shall also touch briefly on the issues of foreign phase-out and extending the Magnuson Act to tunas.

In October of last year, PCFFA hosted the Pacific Fishermen's Conference in the small fishing village of Trinidad, just north of Eureka, California. The intent of the conference was to bring together the various segments of the fisheries from California, Oregon and Washington; the focus of the conference was on the reauthorization of the Magnuson Act. As a result of that conference, a coalition was formed, under the banner "Fishermen's Solidarity", that set about hammering out an agreement on changes that were felt essential to the Magnuson Act.

Fishermen's Solidarity is made up of representatives from organizations of trollers and trawlers, sport fishermen and processors fishermen's wives and Indians, local businesses and governments. After numerous meetings throughout the fall and winter a position was arrived at and much of that is incorporated now in the House bill, H.R. 1533. The Solidarity position represents a consensus, a compromise, a reasoned position that is far more moderate than that which persons such as myself had advocated, including the abolishment of the Pacific Council altogether.

I am here today to speak in favor however of these very modest, very reasonable, but very necessary changes that Solidarity has proposed. For, it is my firm belief that immediate changes must be made to the Magnuson Fishery Conservation & Management Act to assure fair and knowledgeable representation and provide fishery habitat protection or there will be no fishery left to conserve, much less manage.

I would like to begin with the issue of representation. I think Nat Bingham, the president of PCFFA, best summarized Solidarity's position on this issue when he stated, "no regulation without representation".

The Solidarity proposal addresses the appointments process by requiring that the Governors consult with the fishery organizations affected by fishery management plans prior to council nominations being submitted. There is no such requirement under present federal law; this proposal should help prevent instances such as we've

had in the past where friends or campaign contributors of a Governor, with little knowledge of the affected fisheries, were nominated in lieu of persons known and respected among their peers. I suggest also that language be added to require, in the event of a council vacancy, that the Governors be required to submit their list of nominees within 30 days of a vacancy and that the Secretary fill any vacancy within 30 days of receiving the lists of nominations.

The Solidarity position on qualifications for council members would require that only active fishermen (sport or commercial) or fish processors or their representatives from those fisheries directly affected by a fishery management plan could be nominated or appointed to a fishery management council. This requirement allows only experienced and knowledgeable appointed members on each council and should help eliminate the problem presently existing whereby diletantes and dabblers have served to the detriment of the fishery. I would add here though that I think language should be added to require a balance of interests.

Not only does the Solidarity proposal provide assurances that council members will be experienced and knowledgeable, but it places on the councils those persons who have an economic stake in the conservation and wise management of the fisheries. And, the balancing of various interests on the councils should protect against any one interest seeking short term profits at the expense of the resource. A further protection, of course, is Secretarial disapproval. The requirement Solidarity has established for members, will result in better working, more responsible and more responsive councils.

Also, it was Solidarity's position that the non-voting seat held by the U.S. Fish & Wildlife Service (Department of the Interior) on the regional councils should be eliminated. On most councils, the USFWS participation and attendance has been poor; on the Pacific Council, however, the USFWS has maintained a hostile presence to the commercial and recreational fisheries—fisheries that the Pacific Council is charged with conserving and managing. Frankly, we see little justification for allowing the agency that gave us such projects as the Red Bluff Diversion Dam and the Kesterson National Wildlife Refuge sitting on a body responsible for protecting and managing natural resources.

I am happy to say that much of what Solidarity sought in the way of representation amendments have been incorporated in the House version of the Magnuson Act reauthorization amendments—H.R. 1533. Perhaps not going as far as Solidarity proposed, and of course we think the USFWS position should still be eliminated, we are nevertheless pleased with the language in that bill and can support it.

My last comment on the issue of representation is that, between the time I testified on the House side on the Magnuson Act reauthorization and now, a salmon troller has finally been appointed by the Secretary of Commerce to the Pacific Council. This was after 10 years of trying to get such a person named. As you know, salmon has received more attention than any other fishery under Pacific Council jurisdiction and the commercial salmont trollers have been the most regulated of any group under that council's control. I think the appointment of David Danbom, a troller, this year is a result of the attention many members of Congress have given the representation problem. I would hope the Senate will also approve language, in it's amendments to the Magnuson Act, to assure fair and balanced representation as well as knowledgeable and experienced representatives in the future on the regional councils.

The second major part of the Solidarity proposal that I wish to briefly discuss is that of fishery habitat. The destruction of fishery habitat has been a major cause in the decline of many fisheries. Solidarity, together with the National Wildlife Federation, have developed habitat language that both groups think essential for inclusion in the Magnuson Act. The significant parts of that language have been incorporated in the House bill and are similar in concept to the habitat language in S. 747.

The habitat proposal put forward by Solidarity and the Wildlife Federation does not expand the jurisdiction of the councils, it simply requires that information on habitat conditions affecting fish stocks be included in fishery management plans and it addresses some inadequacies in present law, under both the National Environmental Policy Act (NEPA) and the Fish & Wildlife Coordination Act, regarding the coordination and responsibilities of federal agencies for the protection of fish habitat.

As you know, fishing effort is just one of a number of factors affecting the health of fish stocks; the habitat amendments Solidarity proposes would make the council consider environmental conditions as well. The myopic approach the Pacific Council has taken to fisheries management has been disastrous to both fishermen and fishery resources.

It is Solidarity's position that restricting fishing effort while ignoring the damming and destruction of spawning and rearing habitat is no way to conserve a fishery; cutting back on fishermen's catches while ignoring the diking, filling and destruction of wetlands necessary for nutrients and nursery habitat is no way to manage a fishery.

Although the House language does not go as far as what either Solidarity or the National Wildlife Federation originally sought, it is an important first step toward their recognition of habitat plays in fisheries management. The House language requires the management councils to include habitat language in the fishery management plans and amendments and requires federal agencies to respond to council concerns regarding fish habitat issues in a timely fashion. I would hope that the Senate will adopt habitat amendments at least as strong as those passed by the House Merchant Marine and Fisheries Committee.

Fishermen's Solidarity in its initial meetings did discuss the issue of foreign phase-out, however, it has no position on it at this time. Certainly, the concept of phase-out of the foreign directed and joint venture fleets from U.S. waters by a date certain is attractive to many, i.e., U.S. waters being fished exclusively by U.S. fishermen; the boost to many coastal economies and increased employment from domestic processing of fish that previously were caught by or sold to foreign fleets. My only warning is that if joint ventures, i.e., the sale of fish by U.S. fishermen at sea to foreign processors, are to be eliminated by a date certain, then a program must be initiated to ensure that the affected U.S. fishermen will have domestic markets equal to or better than those that you would eliminate. Equity, I would argue, demands that if the joint ventures are to be eliminated, consideration must be given to limiting U.S. fish imports to assure domestic markets for U.S. fishermen.

Last, Fishermen's Solidarity has no position on the proposal to bring tuna under the jurisdiction of the Magnuson Act. However, PCFFA does have a position, since many of the fishermen belonging to our member associations are involved in the albacore tuna fishery. We oppose inclusion of tuna under the Magnuson Act.

First, the financial ability of the councils to adequately manage another fishery is highly questionable. Second, given existing international agreements, we see no need, for either resources protection or the protection of the industry, to bring this fishery, previously exempt, under the provisions of the Magnuson Act.

Again, I wish to thank the committee for the opportunity to testify here today. I will be happy to answer any questions you may have.

[The following information was subsequently received for the record:]

QUESTIONS BY SENATOR LAUTENBERG AND THE ANSWER

Question. Do you support the Habitat Provisions found in S. 747?

Answer. Yes, however I would suggest two minor modifications.

First, in the amendment to Section 303 of the MFCMA proposed in S. 747, the new subsection (f), I suggest that paragraph (5) (p. 7, lines 12-17 of the 26 March version of S. 747) be deleted. I do not think this paragraph is needed given the language in the other paragraphs of the subsection and, further, it provides a giant loophole for councils and the Secretary to avoid habitat considerations in a FMP.

Second, in the amendment to Section 304, inserting Subsection (g), I suggest language regarding consultation (p. 8, lines 23-24 of S. 747) should include the following clause after "States,": the fishing industry. There may be instances where the industry is cognizant of habitat conditions that the states or councils are unaware of, or where industry is willing to comment or speak out when the councils or states, because of certain biases or political pressure, may be unwilling to voice concern.

Senator STEVENS. Thank you, Mr. Grader.

Mr. Fisher.

Mr. FISHER. Thank you, Mr. Chairman. My name is Bart Fisher, and I am a partner in the law firm of Patton, Boggs & Blow in Washington, DC and professorial lecturer in international relations at the Johns Hopkins School of Advanced International Studies.

I have been asked by the committee to address the nexus between U.S. fishing policy on the one hand and U.S. trade policy in

general, and possible improvements in the Magnuson Fishery Conservation Management Act, and the U.S. trade laws in particular.

I am offering my personal views in an individual capacity and appreciate the opportunity to participate in these hearings. The bulk of my testimony will address section 10 of S. 1245, introduced by the chairman, which would permit the President to reduce or eliminate MFCMA fishery allocations pursuant to section 301 of the Trade Act of 1974 when a foreign government maintains an unreasonable, unjustifiable, or discriminatory act, policy or practice which burdens U.S. commerce in fish or fishery products.

My conclusion is straightforward. I support the proposed amendment to section 301 as a necessary strengthening of the U.S. foreign trade laws to promote the exports of U.S. fish and fishery products.

Most Americans are by now aware that we have a $150 billion trade deficit this year, $50 billion of that with one country alone, Japan. I would guess, however, that most Americans would be startled to learn that the United States is currently running a $5 billion balance of trade deficit on fishery products, with imports in 1984 of $5.9 billion for the U.S. fishery matched against only $939 million in exports.

On the import side, the U.S. fishery is under heavy pressure from many different nations. Huge increases in ground fish imports from Canada, shrimp imports from Mexico and Ecuador, tuna from Thailand, and many other fish products suggest from the import side at least an industry under siege from many foreign nations which have targeted their fishing industries for special assistance. Put another way, almost 4 percent of the overall U.S. trade deficit is in the area of fish products.

Accordingly, the solution to this trade imbalance would assist not only the U.S. fishing industry but also the broader trade picture.

What is particularly distressing is the relatively low level of United States fish products entering Japan, a country which not only receives the largest allocation in the United States EEZ, but also, as I said, is running a $50 billion trade deficit with the United States.

The Republic of Korea and Taiwan, along with Japan, also have large trade surpluses with the United States and maintain serious trade barriers limiting exports from the United States fishery such as quotas on herring and surimi in Japan, a tariff on salted salmon of 12 percent in Japan; a tariff on frozen crab of 6 percent in Japan; a tariff on salted salmon roe of 5 percent in Japan; a tariff on frozen fish of 20 percent (Korea); import licensing restrictions on a salmon (Korea); and very high tariffs on fish imports (Taiwan).

Now, what has happened is that United States exports of fish products to these countries, Japan, Korea, and Taiwan, have dropped in 1984, despite the fish and chips policy of the Magnuson Act. Apart from Japan, Korea, and Taiwan, barriers have existed in the EEC with historically high and damaging reference prices, Norway, Iceland, Mexico, which currently has a duty on shrimp, and many other Latin American countries, including Ecuador, Peru, Chile, and Brazil. Insult is added to injury when it is realized that a country such as Korea, Taiwan, Mexico, and Venezuela

obtain duty-free entry for their imports into the United States under the Generalized System of Preferences.

Now, by calling attention to foreign tariff and nontariff barriers to the exports of U.S. fish products, I do not mean to imply that these barriers are the sole or even the primary reason for the poor export performance of U.S fish products. Other problems for U.S. fish exporters, as you know, include the relatively high value of the dollar and higher U.S. labor and processing costs.

The fact remains that foreign tariff and nontariff barriers to fish products are significant impediments, and the question is whether the Magnuson Act provides adequate leverage to get rid of these things.

The MFCMA includes among its criteria to be considered when making foreign allocations: First, whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both U.S. fish and fishery products for which the foreign nation has requested an allocation; and, second, whether, and to what extent, such nation is cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from U.S. processors or from U.S. fishermen.

The linkage of the issues of foreign fishing privileges and foreign market access in the MFCMA has become known as the fish and chips policy.

While some progress has been made, particularly with Japan, under the fish and chips policy, it is clear that more needs to be done to promote U.S. fish exports.

The fish and chips policy has simply not gone far enough to promote the entry of finished U.S. fish products into foreign markets. The reason, in my opinion, is that foreign fishing allocations have traditionally been driven by diplomatic and foreign policy considerations with the fish and chips policy being operational only at the margins. What is needed is to buttress section 301 with the amendment that is mentioned in your bill. Under section 301, parties in the United States can attack the unreasonable foreign trade practices of foreign governments, and the President may increase tariffs or impose quotas.

Section 301 directs the President "to take all appropriate and feasible action within his power" to enforce "U.S. rights under any trade agreement" (id., sec. 2411(a)(1)) and to counter any foreign trade practice that is "unjustifiable, unreasonable, or discriminatory and burdens or restricts U.S. commerce." While each of the operative words is a term of art, it is fair to say that section 301 is intended to encompass the universe of potentially claimable rights for U.S. exporters of goods, services, and capital.

The question is—and the amendment, though, in your bill, Senator Stevens, would permit the President to also withdraw fishing privileges, and that is the third string to the bow or string, arrow, and quiver, which is very important. The reason we need it is it is very difficult under 301 to conjure up a U.S. duty or quota that does not also injure a U.S. domestic industry. You have this problem all the time in 301 cases. Second, under the GATT, compensation for this higher duty might have to be offered by a lower duty

on another U.S. product. So this question of fishing privileges is central to the use of 301, and thus section 10 of your bill would supplement this range of potential remedies in a very appropriate fashion in my opinion.

Under section 301 the President may: First, suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; and, second, impose duties or other import restrictions on the products of, and fees or restrictions on the services of, such foreign country or instrumentality as he deems appropriate.

In 1984, Congress amended section 301 to permit the President to restrict service sector access authorizations.

Thus, the President, under section 301, currently has the authority to impose duties or quotas, or deny licenses for services. For example, if the United States wanted to export frozen salmon to Korea, but was being excluded by an unreasonably high import duty, or by import licensing limitations, the President would be authorized to impose a duty or quota on any import from Korea to force the foreign government to change its ways. This type of remedy, however, has two problems. First, it is difficult to conjure up a U.S. retaliatory duty or quota that does not also injure a U.S. domestic party.

Section 10 of S. 1245 would supplement this range of potential remedies by permitting the President to reduce or eliminate MFCMA fishery allocations when a foreign government maintains an unreasonable, unjustifiable, or discriminatory act, policy, or practice which burdens U.S. commerce in fish or fishery products.

Section 10, in other words, would add another remedy to the existing arsenal of weapons available to counter unfair restraints on U.S. exports. In addition, its presence would highlight the visibility of section 301, which, to the best of my knowledge, has never been used by the U.S. fishing industry to counter import limitations imposed by foreign governments. The net result would be a two-track system: First, the fish and chips policy of the Magnuson Act designed to induce foreign governments to reduce trade barriers in order to obtain allocations; and, second, the use of section 301 of the Trade Act of 1984 as an enforcing mechanism for the Magnuson Act.

In terms of our complex, trade-related bureaucracy, the amendment would put the Office of the U.S. Trade Representative, which chairs the interagency section 301 committee, in an ongoing dialog with the Secretaries of Commerce and State regarding foreign trade practices in the fishing area.

I believe that the proposed section 301 amendment in S. 1245 would be compatible with S. 1386, introduced by Senator Gorton on June 27, 1985, which is also designed to promote the Americanization of the U.S. marine fishery resources.

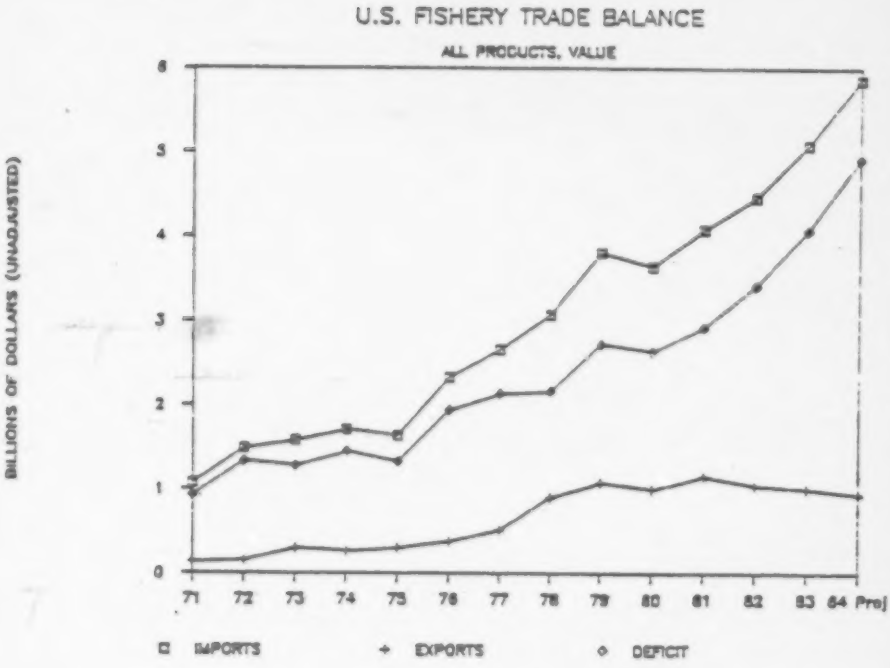
Section 10 of S. 1245 reflects the growing demand for reciprocity in our trade relations with Japan in particular, which was most recently voiced by the Senate's 92 to 0 vote in favor of Senate Concurrent Resolution 15. Buttressing section 301 can assure that Japan's import limitations will not be cost-free. In my view, it has become increasingly difficult to understand why we should contin-

ue to allow the Japanese to harvest enormous quantities of valuable fish in our exclusive economic zone waters while they continue to deny us access to markets which they consider vital.

Let me just say that the U.S. fishing industry possesses unique leverage in its quest for foreign market access, the allocations it grants for foreign fishing. As opposed to sunset industries, such as textiles, steel, and footwear, which have no commensurate leverage against increased foreign imports, the U.S. fishing industry can limit access to its primary resource, fish, to promote its goal of increased exports, and I commend your committee for addressing this very important issue.

Thank you.

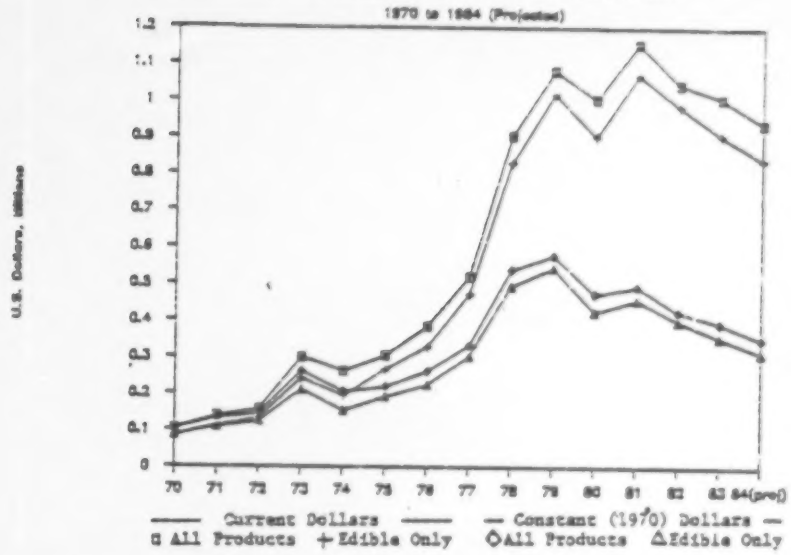
[The charts referred to follow:]



U.S. Fishery Trade Deficit, 1971-1984 (Projected)
All Products

	Thousands of Dollars ($000)		
Year	Imports	Exports	Deficit
71	1,074,201	139,245	(934,956)
72	1,494,411	157,888	(1,336,523)
73	1,583,133	299,168	(1,283,965)
74	1,710,878	262,132	(1,448,746)
75	1,637,099	304,729	(1,332,370)
76	2,332,345	384,690	(1,947,655)
77	2,662,191	520,496	(2,141,695)
78	3,076,564	905,534	(2,171,030)
79	3,811,052	1,082,366	(2,728,686)
80	3,648,082	1,006,154	(2,641,928)
81	4,086,995	1,156,995	(2,930,000)
82	4,467,013	1,045,303	(3,421,710)
83	5,088,527	1,008,684	(4,079,843)
84 Proj	5,865,755	939,730	(4,926,025)
Nov 83	4,606,653	953,450	(3,653,203)
Nov 84	5,310,279	888,272	(4,422,007)

U.S. FISHERY EXPORTS, ALL COUNTRIES



U.S. Fishery Exports, 1971-1984 (projected)
All countries

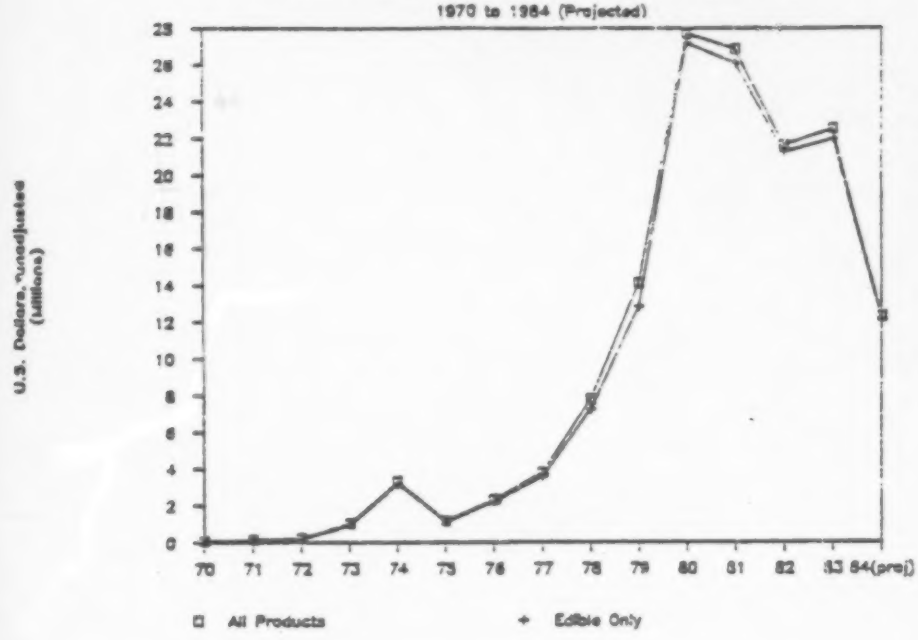
Year	total current $000	edible current $000	C.P.I. Deflator	total 1970 $000	edible 1970 $000
1970	104,533	86,474	100.0	104,533	86,474
1971	139,245	113,637	104.3	133,504	108,952
1972	157,888	134,196	107.7	146,600	124,594
1973	299,148	241,866	114.4	261,510	211,421
1974	262,132	194,966	127.0	206,403	153,517
1975	304,729	247,360	138.6	219,862	178,500
1976	384,690	329,810	146.6	262,408	224,973
1977	520,496	473,373	156.1	333,438	303,251
1978	903,334	831,654	168.0	537,008	495,032
1979	1,082,366	1,020,204	187.1	578,496	545,272
1980	1,004,154	904,363	212.3	473,930	425,984
1981	1,156,995	1,072,765	234.1	494,231	458,251
1982	1,045,303	985,292	245.9	425,093	400,688
1983	1,008,684	907,688	255.7	394,479	354,982
1984 Proj	939,730	839,925	267.9	350,776	313,522
Nov 1983	953,450	861,537			
Nov 1984	888,272	797,219			

U.S. Fishery exports to JAPAN

	Total	edible only	
	$000	$000	m.t.
1970	25,904	23,464	13,985.8
1971	26,032	25,285	11,135.4
1972	23,845	23,072	8,261.4
1973	98,071	91,113	34,406.7
1974	51,502	50,003	13,883.2
1975	73,302	71,916	19,576.8
1976	96,118	93,668	18,167.5
1977	219,034	213,106	52,731.6
1978	513,623	509,303	95,392.8
1979	567,850	563,006	114,816.7
1980	405,876	399,720	103,329.4
1981	559,968	552,313	133,167.9
1982	620,223	613,608	172,023.0
1983	512,985	505,478	153,413.6
1984Proj	503,203	495,900	154,119
Nov 1983	506,453	499,208	156,077.0
Nov 1984	496,796	489,749	156,794.3

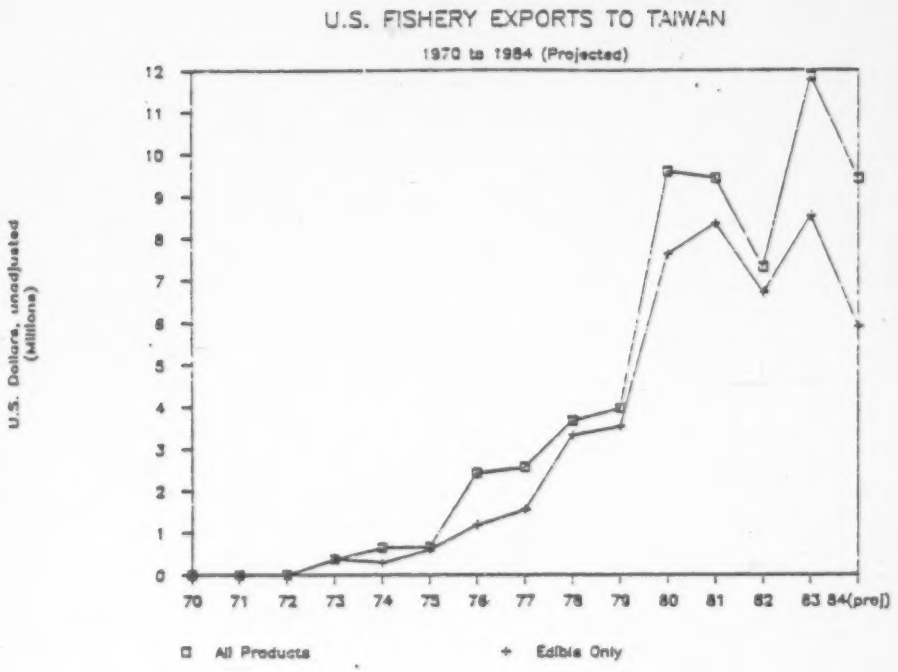
U.S. FISHERY EXPORTS TO SOUTH KOREA

1970 to 1984 (Projected)



U.S. Fishery exports to SOUTH KOREA

	Total	edible only	
	$000	$000	m.t.
1970	93	56	461.3
1971	177	161	620.1
1972	236	213	774.7
1973	1,060	960	2,152.3
1974	3,331	3,201	5,573.3
1975	1,175	1,119	2,356.4
1976	2,367	2,245	4,756.9
1977	3,840	3,611	3,116.7
1978	7,816	7,290	5,520.7
1979	14,117	12,650	4,783.6
1980	27,679	27,176	6,206.6
1981	26,853	26,084	12,316.1
1982	21,637	21,262	11,107.2
1983	22,529	21,980	9,995.0
1984Proj.	12,305	12,033	8,032
Nov 1983	22,247	21,7a7	9,914 0
Nov 1984	12,151	11,91a	7,9a7.3



U.S. Fishery exports to TAIWAN

	Total	edible only	
	$000	$000	m.t.
1970	8	8	4.5
1971	0	0	0.0
1972	4	4	0.9
1973	380	375	127.0
1974	645	294	329.3
1975	667	609	682.7
1976	2,442	1,198	870.0
1977	2,578	1,566	1,175.7
1978	3,679	3,347	2,053.0
1979	3,981	3,556	1,202.0
1980	9,609	7,655	1,256.9
1981	9,447	8,376	1,292.3
1982	7,324	6,722	885.0
1983	11,857	8,549	1,501.4
1984Proj.	9,433	5,910	924
Nov 1983	2,517	5,568	1,027.0
Nov 1984	9,776	3,849	632.2

Senator STEVENS. Thank you very much.

Mr. Martin, does your colleague wish to make any statement?

Mr. MARTIN. No.

Senator STEVENS. Senator Gorton.

Senator GORTON. Just a couple of questions.

Mr. Greenberg, if you took the word "predominantly" out of section 306(b), would that allow our presumption if there was any impact whatsoever?

Mr. GREENBERG. No. Under section 306, as it is currently written, there are two standards that have to be met: First, the fishery has to be predominantly in the FCZ, and, second, the State action has to substantially and adversely affect the implementation of an FMP. That second standard is sufficient by itself, in my judgment, and you do not need to require that a fishery be predominantly in the——

Senator GORTON. For the first standard you would not have to measure?

Mr. GREENBERG. I do not think there is any need to measure whether a fishery is predominantly or not predominantly in the FCZ. If State action substantially and adversely affects an FMP—that is not a de minimis rule; that is a pretty tough rule—then the Federal Government ought to be able to preempt that State action.

Senator GORTON. Mr. Rosen, sort of a similar question for you.

You have asked for an amendment to require Federal agencies to mitigate the effects of their activities of fisheries management.

What would happen if they did not do so? Would that mean they could be enjoined from conducting any activities?

Mr. ROSEN. Under current law, I do not believe that would be possible, certainly not under the Fishery Conservation and Management Act. Under the Fish and Wildlife Coordination Act, currently the Marine Fisheries Service can recommend alternate actions to a Federal development agency. That Federal agency must give those recommendations full consideration in review of their project, which means they can reject the recommendations, they can accept them or accept license, or permit some and reject others. Some of the Army Corps of Engineers districts, for example, are very good about accepting comments; others are not so good. There are problems from region to region and Federal agency to Federal agency.

Currently, the councils, on the other hand, have only as much authority to comment to a Federal development agency as you do or I do as an individual. One of the problems that has been expressed to me by members of the councils is the fact that the councils cannot even get a letter answered that they send to a Federal agency such as the Army Corps of Engineers or the Federal Energy Regulatory Commission on an impact. I think that should be cleared up.

Senator GORTON. So it is a procedural change that you want?

Mr. ROSEN. What we are asking for would go beyond a procedural change. Providing congressional endorsement to provisions or specifications in fishery management plans that delineate vital fishery production areas would allow the councils, but more importantly, the Marine Fisheries Service, to take these fishery management plans and provide them to, let's say, the Army Corps of Engi-

neers, and say any actions in this area will probably have an impact on these federally managed fisheries and therefore we should look very, very carefully at what you are doing, and if there would be fishery impacts try to mitigate those impacts as best as possible.

Currently, the habitat policy of the Marine Fisheries Service recommends that the Councils do provide in their fishery management plans information on production requirements of the fishery. Of course, that is an internal policy document, and it really has no bearing on what another Federal agency might do or not do. We would like to see Congress give its endorsement to the process now recommended by the policy at a very minimum. Of course, we would like to see legislation enacted that goes beyond that, and Senator Lautenberg's bill does provide such enhancement.

Senator GORTON. Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

Mr. Martin, on your comments about phaseout—and I think we have had a lot of comment today about flexibility, there is no question about that, but do I understand that you would just as soon not have any phaseout goal at all?

Mr. MARTIN. The councils are only going to speak as far as a joint venture policy that has been developed in the New England council and also in the Mid-Atlantic council, has made it absolutely clear of our intent to phase out foreign fishing. There should be no question in that, and I think all council chairmen are in agreement on that position.

What we are concerned about on the east coast as far as the mackerel stocks are concerned is that the set date phaseout may not allow us to develop what we think is the best enhancement of the domestic fishery in order that we may in fact take advantage of the mackerel stocks which are there, the same process that developed with butterfish and developed with squid, and that is an exchange of technology.

We want to have the flexibility to extract from the foreign fishermen the greatest knowledge we can to our people, pound for pound get the greatest amount from them before they are gone, and our concern is that a rigid date may prevent that from happening.

We are not opposed by any means to a phaseout of foreign fishing. That is a driving force behind our council policies, and it is very clear, and it is stated very clearly that it is an interim program, the JV policies are interim program to the eventual phaseout of foreign fisheries; whether it be 5 years, 3 years or 2 years, we want to be flexible enough to adjust it accordingly.

Senator STEVENS. What if we would provide in these amendments that each council could phase out on a species-by-species basis, but any species where there was a domestic fishery, where they did not set a goal, they would have to report back to Congress in 3 years why they have not done so?

Mr. MARTIN. That is not an issue that has been discussed with the chairmen, but I think we would be in agreement with that. I think earlier this morning the species criteria is a good criteria for phaseout. We can identify which species we want to get the maximum benefit and the foreign out of. I have no problem with that.

Senator STEVENS. Another question I have is we have a sunset on this. We did it so we would have a review period. There were a lot of naysayers at the time we did the 200-mile limit that you will recall.

Have you taken a position, has your group taken a position now about the extension time? Each one of these bills extends the Magnuson Act. Why should it not become permanent legislation now?

Mr. MARTIN. We would support that, Senator. We believe—one of the things that came out very early on in the criticisms of the council process, we have to be careful I think that we do not look at the administration of the process as being or representing the concept. I think all the chairmen agree it is a valid concept, and you cannot let the administrative problems or the differences of interpretation in any way tarnish the concept of management, regional council management. We support it 100 percent, and certainly we would support continuation of the act.

Senator STEVENS. There is no question about it. We created a new, unique form of government, halfway between the State and Federal Governments, and gave it the power or authorized it to have the powers of each if the State would cooperate.

Mr. MARTIN. I would only say 8 years is an awful short time to condemn it.

Senator STEVENS. But it has proved itself, I think. I am toying with the idea of either trying to make a permanent law or make it long enough now that the next review is by people who were not in the room when we made the last time because we are inclined to be a little prejudiced about our babies. I am one of the fathers of this thing, and this is one of those creatures that had too many fathers, perhaps.

Mr. Greenberg, you want a limited exception, but how would you figure out who had the right to grant that, the Feds, the council, the Governors?

Mr. GREENBERG. Well, I think you would have to have a government-to-government agreement for reciprocal fishing rights in order to trigger the exception. I think you would also need more than just a GIFA which authorizes fishing; you would need a kind of an agreement with a foreign country that had specifically contemplated U.S. fishing activities within that country's zone, and in that case——

Senator STEVENS. That is authorized today, is it not?

Mr. GREENBERG. Pardon?

Senator STEVENS. That is authorized today, if you enter into an agreement, if you can negotiate an agreement saying you can fish, then you can enter into an agreement saying you can fish so long as we can fish over there, and then you can say, well, we will give you the right to fish over here for ours if we can fish over there for yours.

Mr. GREENBERG. That is right.

Senator STEVENS. That is all contemplated today, is it not?

Mr. GREENBERG. Yes; I believe it is. The question is what impact an absolute phaseout would have on those provisions of existing law, and whether you need some reference in the statute that would allow continuation of reciprocal fishing privileges.

Senator STEVENS. Now, I understand you. I understand that, and we will try to protect it because I think there should be fairly unlimited authority. After all, we approve the GIFA's, ultimately, so I think that we should—that should be protection enough to assure that there is no change. But I will be happy to work with you on that.

Mr. GREENBERG. I appreciate that, Mr. Chairman.

Senator STEVENS. Mr. Rosen, your comments about habitat lead me to believe that you would like to see more Federal involvement in the habitat question and not leave it to the councils.

Am I wrong?

Mr. ROSEN. It is the councils' job to develop fishery management plans. We do not have any argument against any council that feels strongly that it must provide comments to, let's say, a Federal development agency on an action proposed by that agency. But it is the Marine Fisheries Service's job, through its Habitat Conservation and Research Divisions to go to battle, let's say, with other Federal agencies proposing to undertake actions that could affect federally managed fisheries. So we do not necessarily——

Senator STEVENS. Now, wait a minute. You said that before in your testimony, too. Do you believe that the regional council areas are federally managed fisheries?

Mr. ROSEN. I do not understand. Areas in what respect?

Senator STEVENS. The areas under the jurisdiction of these regional councils. Are they federally managed fisheries?

Mr. ROSEN. What I am talking about is the habitat that is needed for production of federally managed fisheries, wherever those fisheries are, wherever the council is——

Senator STEVENS. You have Mr. Martin sitting beside you. He and his colleague have jurisdiction over the Mid-Atlantic Fisheries Management Council. That is a substantial area.

Do they, in your opinion, now have habitat management authority?

Mr. ROSEN. No; they do not.

Senator STEVENS. You have made some requests for additional authority in this bill. Would you give it to them or would you give it to Bill Gordon?

Mr. ROSEN. Senator, we are not talking about managing habitat. We wish simply to ensure that Federal activities do not adversely impact the habitat of federally managed fisheries. We do not want the councils or the Marine Fisheries Service going in and, for example, manipulating or managing habitat within a State to enhance, let us say, the production of salmon.

We just want to make sure that—for example, the Federal Energy Regulatory Commission which would license a hydro dam on a salmon stream—all needed mitigation for fisheries is provided and that the councils have a say in determining whether and what type of mitigation is needed.

Senator STEVENS. Is that not in the coastal zone management plan, the whole Coastal Zone Management Act? This committee thought it was. I thought you were talking about the area offshore. Now, you are talking about the area onshore?

Mr. ROSEN. Both. Wherever the fishery and whatever habitat the fishery requires would be included. But only in terms of Federal ac-

tivities in those areas. The coastal zone management program provides a fairly discrete boundary area-wide and State by State with repect to its jurisdiction, as I understand, Senator, and please correct me if I am wrong on that.

Senator STEVENS. I was involved in that. I thought there was a pretty clear line of separation between the two. But as a practical matter, let me just give you an example. In Alaska the manager of the Kenai Moose Range refused to allow the State of Alaska to install fisheries enhancement facilities in barren streams within the moose range on the basis that the range was set aside for the management of moose, not fish.

This is serious, now. Are you suggesting we should have either the regional council or Bill Gordon have some control over those onshore lands, because that is fisheries habitat? Or are you saying that you are talking about the problem of the Department of Interior authorizing leasing lands offshore which might have an impact on fishery breeding grounds and spawning grounds?

Now, which is it or is it both? Is it really both?

Mr. ROSEN. I would say it is both. Definitely, if the council has a problem with leasing or the Marine Fisheries Service has a problem with leasing, I think they should be integral to the Federal Leasing Agency's review process as it might impact fisheries.

I think the moose range example is an issue of not taking an action, as opposed to taking an action that may have adverse impacts on existent fisheries.

Senator STEVENS. All right; I think I understand. I think we will have to work with you a little longer to see what you mean. I think I know what you mean, but I am not sure that we are not intersecting a whole series of other acts that are liable to get us in trouble if we try to amend those while we try to improve the Magnuson Act.

Mr. Martin?

Mr. MARTIN. Senator, I can speak from the council point of view, especially from a council that is very concerned about habitat, especially in recent times about the striped bass situation. Our concern is that no one is speaking out for the fisheries that we are trying to manage, and for us to manage fisheries we cannot sit at the 2-mile post and look seaward.

We must be able to comment and ask other Federal agencies who have authority to respond to our concerns if we are going to manage the species. Striped bass is a prime example of what happened in New York State. We were concerned about rapidly increasing those stocks, but something happens and the only thing we can do is send a letter. But no one is accountable or no one has to respond to us.

Senator STEVENS. All right, I am willing to explore that. But I am reminded of my late and good friend Scoop Jackson and I—it was really his bill, but I cosponsored his bill on the National Environmental Policy Act. By the time the courts got through construing that, it became a mechanism for delaying everything that was development-oriented in the country for a few years, until we straightened it out.

Now, you are not contemplating an environmental impact statement on habitat, are you?

Mr. MARTIN. No, sir. We just want to be able to speak with the fisheries management.

Senator STEVENS. One last thing.

Mr. Grader, you commented on consultation with the industry as far as your statement was concerned, and I applaud the State of California's laws. But why should we put into a Federal law restrictions on the power of a Governor to appoint representatives of the State?

Mr. GRADER. Thank you, Senator. I think the basic reason is the problems we have seen with the councils. At times some of the appointments the Governors have made have not been good appointments, and I think those could perhaps have been taken care of had they bothered to consult with their fishing industry, and many of them simply have not.

We took care of our problem in California. In a way, we were fortunate our Governor signed the bill. He could have very easily vetoed it. But I think it should be in a Federal statute. I think we have had some bad appointments. I think the example of the Gulf Council that Mr. Greenberg has alluded to—we have certainly had problems on the Pacific Council. I think in your area, the North Pacific Council has been one of the better councils, certainly, you know, as far as appointments goes.

But that has not held true throughout the rest of the Nation. I think if the Governors were required to consult with industry—that does not mean that they have to follow industry recommendations, but at least consult with them and ask, what about these people, and find out who are the most qualified people to submit.

The fishing industry is just a very small part of the overall economy in a number of States. Many Governors are totally ignorant of the fishing industry. Let us at least give them the benefit of consultation.

Senator STEVENS. The trouble with that is, we start putting that down and then we are going to have one fisherman and one processor and one environmentalist and, you know, one distributor and what-not. I do not think we can categorize these positions that the Governors have to fill.

And I have got to tell you, there will be a reverse curve. Jim Campbell there sits on a council with several fishermen, mainly because I guess about every fourth person in Alaska is either a fisherman or married to one or the son of one or has a son, such as I do, that is one. Now, that gives it a different political spectrum in our State.

But I would hesitate to have something that says you have got one fisherman. It is liable to knock two or three of ours off.

Mr. GRADER. Senator, I agree. And of course, what we are asking for is not that you say that there will be one commercial, one recreational, and one environmentalist, and so on. All we are simply asking here is that the Governors consult with the fishing industry prior to submitting the nominees. It does not say what the makeup shall be.

Senator STEVENS. All right. Thank you. I appreciate it.

Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Neither the lights nor the bells do affect me.

Senator STEVENS. I do not see any reason. We are looking at six people. They each have 5 minutes and then we have 5 minutes to review the testimony. So I just turn them off.

Senator LAUTENBERG. I agree. I do not want to see any lights either.

Senator STEVENS. You will not.

Senator LAUTENBERG. I do not have many questions, Mr. Chairman, I just went to tell you that in a geographically small State like New Jersey, 3 million recreational fishermen fish off our coast. So we are a fishing State in the purest sense of the word. We are almost all coastline.

Mr. Martin, your testimony indicates that the council chairmen support the change I have offered for regulating tuna. Does that suggest the exclusion of tuna in the Magnuson Act interferes with the council management of marine fisheries?

Mr. MARTIN. Senator, before you came I gave the example of the swordfish FMP which is presently before the Secretary, which the Secretary of State has raised questions about our involvement with policy. As you heard this morning, the issues on longliners, there has been some consideration as to trying to develop an FMP, fisheries management plan, dealing specifically with gear. And as long as we have the tuna exclusion staring us in the face, we cannot recommend the best effective management plan for the resource.

We have offered language that we supplied to you previously which offset it a little bit if there is some question as to whether or not tuna should be excluded completely. What we want is to remove the burden on our fishermen, and we have to say very regionally, we do not care about the burden on the Japanese fishermen, we are concerned about the burden on our fishermen.

Senator LAUTENBERG. The State Department, as you note, has objected to various aspects of the swordfish management plan, and they have used observer data to support the position. Do you believe that the data that we get from observers on the Japanese longliners is giving us an accurate picture of the impact that they have out there?

Mr. MARTIN. I do not think it is a question of credibility, as one of practicality. Under the act it requires an observer aboard each foreign fishing vessel. I can only tell you from my very limited experience on board a Polish trawler, someone from Pennsylvania should never be on the ocean. But I have been, and you are talking about 24-hour efficient fishing. You are talking about the equipment that is silent.

Our fishermen questioned it, and I think they should question, can you in fact with one person observe a 24-hour operation which is very efficient? The problems you get into of personality, it depends upon the captain. If you're going to have a change in shift of crews, maybe the captain will tell the observer, but what about the second mate, what about the fourth mate?

It also has to do with the personality of the observer. I have no reason to doubt the credibility, but I think it is a question of, is it 100 percent.

Senator LAUTENBERG. It is not a question of credibility and we are not talking about honesty. We are talking about a condition that does not permit realistic appraisals of what is taking place. I

know that some of the foreign vessels do not have adequate room for an observer, and the conditions for an observer could get fairly grim at sea, especially if you are isolated as not part of the normal crew anyway.

It does not make it easier. It makes it tougher to do the job. And my concern——

Mr. MARTIN. But the act says there shall be. We interpret that as being mandatory, and if they do not have the provisions for the observer there is an obvious answer to that question.

Mr. BRYSON. The bycatch percentage from that data seems to be a little less than the bycatch percentage from U.S. fishing, so that it gives you a little bit of an idea.

Senator LAUTENBERG. So that it is possible that there is a slight bias. In fact, it is possible that there is a big bias.

Mr. Rosen, I wanted to ask you, I think you were the one who talked about the striped bass—or was that you, Mr. Martin—about how difficult it is to manage this fish. We see how difficult management is with each of the States developing mitigation plans for the striped bass, and some of them being very tough and some of them being very casual.

I am out in the water a lot and I visit with fishermen and I ask them about taking stripers less than the minimum size, and they kind of wink an eye at me. You know, it is very hard to enforce all of the regulations. Though I share Senator Stevens' view about additional Federal interference in State affairs, if we need Federal regulation, we have got to step up and say so.

With habitat concerns, I think we need the council's involvement, as we witness what is happening with the Chesapeake and now potentially what will happen with the striped bass habitat in New York Harbor, which is the one thriving and remaining habitat for striped bass.

Senator STEVENS. Would the Senator yield on that one point?

Senator LAUTENBERG. Sure.

Senator STEVENS. I understand what you are both saying, but I represent a State that has half the coastline of the United States, one-fifth the size of the United States, and it currently has two Federal biologists in the State, fisheries biologists in the State.

If we give the Federal Government this authority, they will have one habitat manager and we get nothing done. Our State will manage our affairs. Now, if you need some help I think we ought to be able to accommodate this without mandating a Federal jurisdiction that precludes our State from doing what it will do.

Senator LAUTENBERG. I do not think New Jersey needs help. We are very conscientious. There is a lot of pressure by the recreational and commercial fishing community. Much of our State depends on marine industry. I think fishing accounts for something like $1 billion a year worth of economic activity in our State.

But it is the neighboring folks who seem to be less concerned, and sometimes desperation will lead a State to say: Look, we cannot afford to be that tough. Meanwhile, the fishery continues to dwindle, and for us the striped bass, rockfish, is an important fish commodity. We cannot run the risk of losing it. That is why we are so concerned.

When you talk about Alaska with all of its coastline, I am reminded that Alaska is the No. 1 per capita income State in the country. That is not too bad. If coastline means that, well, we will take more coastline.

Does that have something to do with it?

Senator STEVENS. A little bit. It also has the highest per capita cost of living in the country.

Senator LAUTENBERG. Well, you can afford it. I love the beauty of your State and I welcome you to visit ours. I just say, the beauty of your State is reknown, but I welcome you to visit ours and see how nice it compares. There is a little bit different character, of course.

Senator STEVENS. It is very nice. I have been there and I liked it.

Senator LAUTENBERG. How we got off on that, I do not know. But anyway, we do share a common concern. It is interesting to see how the regions, with their different interests seek the same goal.

Senator Gorton said it earlier this morning. We do want to preserve that valuable natural resource that we have, that fishing preserve that we think belongs to this country. And what I am concerned about is why we left tuna out of the whole equation.

Mr. BRYSON. Senator, we have developed a habitat protection section in our plan coming out now for striped bass. Hearings will be held next month. I think with the habitat section we have it probably addresses most of the concerns that Rudy had tried to address or tried to point out to you.

The one thing we do not have and he stressed is that no one has to respond to the councils when they make comments about habitat areas. We are not saying that the EPA should be subservient to the council, but at least a response as to what they intend to do or why they cannot carry out some recommendation would be very helpful.

Senator LAUTENBERG. I appreciate that.

Mr. ROSEN. Senator, if I may, we are not suggesting that any new programs be created. In Alaska, wherever a Federal project is proposed there is a Federal fishery agency review person looking at that project, hopefully working on behalf of fisheries. If there is not, there should be. And the State also should be looking at those Federal projects for their effects on fisheries.

We want to ensure that where the Federal fisheries manager looks at a Federal project, he can get his opinions heard, listened to and accommodated in the overall development or licensing process. We do not want to create any new mechanisms.

We want to take mechanisms that exist and make them work better on behalf of federally managed fisheries. We want to focus attention on the federally managed fisheries in the current Federal review process between the Marine Fisheries Service and other Federal agencies. We do not want to change existing programs.

Senator LAUTENBERG. You know what NOAA said this morning. I just want to make certain that we understand where the agency is going. It does not feel that amending the Magnuson Act to include habitat considerations is necessary, because they have adopted the habitat policy.

How do you feel about this position?

Mr. ROSEN. Well, I think you expressed some disappointment over their position, and I too feel that disappointment. Consider-

able space in our written testimony is devoted to providing insight to just that question.

Senator LAUTENBERG. Could you summarize it very quickly?

Mr. ROSEN. As far as the policy can go, it is great. I do not know of anyone who disagrees with that. In fact, the policy deals with considerably more than the relationship between the councils and FCMA. But as it does deal with the relationship between the councils and FCMA, it is strictly a recommended course of action. It is an internal policy, a policy which has meaning only to the Marine Fisheries Service and the councils.

None of the other Federal agencies need concern themselves with the policy, to consider what goes on in that internal mechanism. What we are trying to do here is have Congress endorse that policy and therefore give it additional weight. And these proposed amendments, your amendments, would make it impossible for any Federal agency to ignore fishery management plans and the federally managed fisheries in the current Federal review process.

The status quo, under the current policy is such that councils have had to go off on their own and, where they thought there were considerable threats to their fisheries management plans or fisheries because of proposed Federal activities, they have taken action independent of the Marine Fisheries Service. And in doing so they have expended considerable energy and expense in trying to get their opinions recognized.

Like I said before, sometimes the councils cannot even get their letters answered which have gone to a Federal agency proposing an action. We want to make sure that this does not continue to happen and that the councils can get back to managing fisheries and developing fisheries management plans.

Give the Marine Fisheries Service sufficient authority within the existing process to ensure that the councils' concerns and the Marine Fisheries Service's concerns are heard and dealt with in an effective and positive manner by all Federal agencies that take actions that might affect federally managed fisheries.

First, one has to determine whether indeed there is going to be an impact on a federally managed fishery, and then, if there is a reasonable cause for concern, then focus the attention of the Marine Fisheries Service and these other Federal agencies on protecting federally managed fisheries.

Senator LAUTENBERG. Thank you very much for your opinions and your testimony.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much. Very interesting comments. We appreciate your time, gentlemen.

Mr. Bruce Freeman, the Marine Fisheries Administration of the State of New Jersey; Mr. Lou Puskas, American Tuna Action Committee of Barnegat Light, NJ; Mr. David Burney, counsel, U.S. Tuna Foundation, Washington, DC; and Mr. Bud Walsh, Washington counsel, American Tunaboat Association of Washington, DC.

I must say that everyone should realize Mr. Walsh back in the old days was on this side of the table and wrote most of this stuff that we are talking about.

Mr. WALSH. It is not my fault, Senator.

Senator STEVENS. We do not blame you. We just acknowledge you. How is that?

Gentlemen, if you have any objections to testifying in the order that I read your names? Does someone have a timeframe problem? If not, if there is no objection, Mr. Freeman, proceed first.

STATEMENTS OF BRUCE L. FREEMAN, MARINE FISHERIES ADMINISTRATION, STATE OF NEW JERSEY; LOU PUSKAS, JR., AMERICAN TUNA ACTION COMMITTEE; DAVID BURNEY, COUNSEL, U.S. TUNA FOUNDATION; AND JAMES WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION

Mr. FREEMAN. Thank you, Mr. Chairman, and members of the committee. My name is Bruce L. Freeman. I am the administrator for Marine Fisheries for the State of New Jersey. I appreciate this opportunity to appear before this committee today to comment on the amendments to the Magnuson Fishery and Conservation Management Act.

This act represents the single most important national policy commitment to our country's ocean fisheries for more than 160 years. From about the early 1800's little consideration was given to a comprehensive fishery policy until the midseventies and the passage of the FCMA.

Since its passage in 1976, the act has been amended several times. Each time there have been adjustments and improvements. Once again we are looking at proposed amendments.

Today I would like to comment on amendments made by S. 747. The first of my comments deals with the habitat conservation. Realizing the discussion that was held just on the former panel and earlier today, we would like to add our comments that we do strongly favor and support this amendment to require conservation and enhancement of fisheries habitat. This change would provide the regional fishery management councils and the Federal fishery agencies with necessary and responsible roles in habitat protection.

We have learned, unfortunately, as a very hard lesson that the most complete and thorough method of eliminating a marine species is to destroy its habitat or place where it normally lives. We have seen time and time again the economic extinction of a fish species in the sea. While causing severe and sometimes widespread economic suffering for people depending upon it for its harvest or its use, given enough time the particular fish manages to return in fishable abundance. Nevertheless, should we completely destroy the habitat or living space of a single species, it simply can no longer survive, and it will be lost forever.

In New Jersey and many other coastal States as well, a large amount of effort has gone into slowing the relentless tide of dredging and filling projects in our shallow water areas. During the past decade or so, we have succeeded in slowing this tide, but have not stopped it. We are still losing important and necessary estuarine and marine habitat and no matter how one looks at it, a loss is still a loss.

As caretakers of our living marine resources, we cannot accept this situation. We must continually be looking for ways not only to

preserve that resource, but ways to increase them. In order to do this, we must maintain at the very least the habitat that we have.

This amendment to the act will provide a formal regional marine fisheries habitat planning and coordination procedure to identify and address habitat problems occurring in the marine environment. The development of such a focal point is already advocated by the National Marine Fisheries Service's habitat protection policy.

The second issue is that of the highly migratory species. When the FCMA was passed by Congress in 1976, tunas were excluded from the act. It was argued that because they were highly migratory, the tunas could only be managed satisfactorily through international fishery agreements.

It was further argued that if the United States held to this position, it would provide a negative economic and political consequence to those coastal nations which did not subscribe to this principle. As a consequence, those coastal nations having tuna resources would be forced into international agreements, and effective management would prevail.

In the 8 years since the implementation of the act, this argument has not shown to ring true. Pressure tactic has not worked. The evidence shows that this position has not accomplished its intended goal.

At the same time our vessels operating off the east coast continue to experience foreign interference, particularly in the swordfish and tuna longline fisheries. Our fishermen continue to face gear conflicts with foreign vessels and losses in the fishing time, which is even more costly than the loss of gear.

More than this, our vessels are commonly prevented from setting their fishing gear within our 200-mile limit, because long lengths of foreign gear continues to fish in the most desirable fishing locations day in, day out, day after day, week after week, month after month until all the fish are caught.

It is indicated in section 2(3) of the act that "the activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of U.S. fishermen." I submit to this committee that with respect to tuna, this condition continues to exist off our coast today.

One of the purposes of the act, as stated under section 2(b)(6) is "to encourage the development by the U.S. fishing industry of fisheries which are currently underutilized or not utilized by U.S. fishermen. * * *" By enacting into law the proposed amendment to include the tunas under the act, we would quickly realize an important fishery.

Despite the shortcomings of the present act of not including tunas under its authority, our fishermen have begun competing with established foreign markets and foreign fisheries off the east coast. We have established markets by our processes, and since 1981, our fishery has doubled its catch and value each subsequent year. We would like to see Congress encourage this development and do away with the hindrance which now exists.

At the same time we are experiencing growth in our commercial tuna fisheries, we are seeing a rapid growing of our recreational

tuna fishery, especially in the middle Atlantic area. A study conducted during 1983 shows that in the five-State middle Atlantic region there are more than 2,500 private and charter fishing boats that made more than 21,000 offshore trips for tuna, billfish, and swordfish. In total they caught some 74,000 fish, of which 73 percent were composed of yellowfin, bigeye, albacore, and bluefin tuna. Direct annual expenditures in this fishery amounted to $42 million.

By including the highly migratory species under the act, Fishery Management Councils would be able to conduct the unregulated-by-catch harvest of foreign longline vessels within the fishery conservation zone.

One of the arguments for the continued exclusion of tunas from the act is that they are more effectively managed on an international basis. However, the vast majority of the signatories to international tuna agreements include tuna within their management fishery zones. We see no reason why the United States could not follow the guidelines established by international treaty while increasing its management authority regarding fishing methods, fishing zones and by-catch.

The third issue I would like to speak on is the observer coverage. We fully support full foreign fishery observer coverage as a means of both enforcement and for gathering scientific information. Changes proposed in this section should end existing problems in the observer program and provide for a true, 100-percent coverage, as was the intent of Congress in the 1983 reorganization.

The fourth issue is the makeup of the regional councils. We support the addition of this section of requiring at least one member of each council to be a commercial fisherman. However, to be equally fair we feel that each council should also have at least one recreational fisherman.

The fifth issue deals with the access to and confidentiality of fishery statistics. The lack of access to certain fishery statistics by the executive director of the Mid-Atlantic Council has created problems in assessing the effectiveness of certain management measures of the Surf Clam and Ocean Quahog [FMP], and in the effective development of amendments to this plan.

It is counterproductive to withhold relevant data from a body legally responsible for development management plans for the fishery that the data is applicable to. We support this amendment to correct this situation.

The sixth issue is that of dislocation compensation program. We support the use of the limited entry in the overcapitalized fisheries; that is, those fisheries in which harvesting power at an economic rate far exceeds the level of optimum yield of the resource. Likewise, we support the concept of compensation as stated in this section of those fishing vessel owners who may be adversely impacted or dislocated by the implementation of FMP, which include limited entry.

Furthermore, we believe that it is entirely appropriate for this fund to be financed in whole or in part by fees on those members of the industry who are beneficiaries of limited entry.

If, however, a dislocation compensation program is provided for, it should include more specific language in reference to who may

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be consisdered for compensation, who is responsible for assessing the amount of possible compensation, and the method or methods of deriving that level of compensation. Furthermore, if any portion of that compensation is used to re-gear or re-train vessels or fishermen for an alternate fishery, it should be stipulated in the authorizing law that the FMP adequately addresses the impacts on the alternate fishery to increased fishing pressure.

The seventh issue is the 3-year authorization of the act.

I fully support the concept of a 3-year authorization, however, it would be advantageous to provide for some minimal amount of increased funding in each of the subsequent years to compensate for inflation.

Those conclude my remarks, and I thank you for your consideration.

[The following information was subsequently received for the record:]

STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
August 23, 1985.

Hon. JOHN C. DANFORTH,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, DC.

DEAR SENATOR DANFORTH: I received your letter of August 13, 1985, posing several questions concerning the reauthorization of the Magnuson Fishery Conservation and Management Act. You indicated that these questions were submitted for the hearing record.

In answer to the first question, I am totally convinced that the United States longline fishery would increase its catch substantially if foreign longline vessels were no longer permitted to fish in the Fishery Conservation Zone. While it is difficult to make precise catch estimates, I would say that the United States east coast swordfish catch north of Cape Hatteras would increase between 14 and 22 percent. This amounts to between $2-$3 million to the fishermen. At the same time, the tuna catch would more than triple. The tuna catch would equate to an ex-vessel value of more than $3 million. it should be noted that both of these amounts are ex-vessel prices. When one factors in processing, transportation, and other related costs, the amount would increase by a factor of three.

Japan, which is the only foreign nation continuing to longline off our coast, not only continues to cause gear conflicts with our domestic vessels, but catches fish that our fishermen could catch. More importantly, it prevents our vessels from fishing the most productive areas. Even though the Japanese fleet has been reduced from approximately 45 vessels that have fished off our coast during the late 1970's, to about half a dozen today, these remaining vessels continue to cause the very same problems that faced our groundfish fleets when we enacted the 200-mile limit, they are fishing the most productive grounds, and catching more fish than we are. One Japanese longline vessel has the capacity of more than ten of our longline vessels. Presently, we have approximately 150 longline vessels off our coast at a time when the Japanese have four or six. However, on a one-to-one basis, they have a fishing capacity of nearly 50 percent of ours, i.e., 150:60.

In order to fully understand the foreign competition with our longline fleet, one needs to understand how the fishery operates. While there are thousands of square miles of ocean off our coast in which to longline, there are only relatively small areas in which the fish tend to concentrate. And, these areas change monthly, weekly and even daily. The tuna and swordfish tend to concentrate along the margins and warmwater meanders or pockets that have broken off from the Gulf Stream and are moving along our continental shelf in a southward direction. Oftentimes, these pockets are only 20–30 miles wide in diameter. As such, the longlines from only a few vessels can easily fill this space. Once such a meander is located, a large-size vessel (foreign longline vessel) can continue to set its 60–80 miles of gear around the clock and cover the entire area. It can continue to set and pull its gear 24 hours a day, day after day, week after week, until the catches decline in that area. Unfortunately, this practice excludes all other vessels from the area. This problem has existed and continues to exist off our coast.

One last point. Continued gear conflicts between the United States swordfish vessels and foreign longline vessels off the middle Atlantic and southern New England coasts led to the amendment of the preliminary fishery management plan for billfishes and sharks that prohibited longline vessels from fishing inshore of 100 miles from North Carolina northward to the United States-Canadian border. This exclusion is only from June to November. Under this amendment, our vessels could fish uninterrupted off our coast, especially in the prime swordfish areas. As a result, our catch of swordfish has increased approximately 30 percent during this six-month period. At the same time, our tuna catches have increased more than 300 percent. As stated above, by eliminating the foreign longline fishery on a year-round basis from our Fishery Conservation Zone, we can expect the swordfish catch to increase another 20 percent or so, and the tuna catch to triple.

The second question you posed deals with the United States observer data in the Japanese longline fishery. It is my belief that the observers do everything possible to obtain accurate catch information. It has only been since 100 percent observer coverage in the last few years that we have seen any meaningful reduction in the Japanese by-catch. However, it needs to be pointed out that an observer, regardless of how diligent, is not able to remain on the fish deck 24 hours a day, three weeks at a time, the usual length of time for his deployment. Judging from reports by our domestic fishermen who fish side by side with these vessels, we have reason to believe that more fish are hooked and killed as a by-catch than are reported.

The swordfish by-catch is undoubtedly an under-estimation of what is actually hooked on their longline gear. The fact that swordfish have a broad bill and cannot be pulled through the water rapidly causes the reported catch rate to be much lower than what is true. It is our experience that because of the swordfish's shape, it cannot be pulled through the water rapidly, otherwise, it will tear off the hook. The high rate of speed at which the foreign vessel pulls back their gear encourages the loss of hooked swordfish.

We have documentation of vessels fishing side by side with the Japanese, fishing at the same depth, using the same hooks, leaders and bait; and our vessels continue to catch swordfish while the Japanese vessels with the observer aboard, repeatedly log only a fraction of their catch of swordfish compared to our catch rate. It is our feeling that the observers are doing their job as best they can; nevertheless, the pulling of the longline gear is done in such a way as to tear off many swordfish before they get to the vessel to be recorded. And, insomuch as the great majority of swordfish are dead on the hook, the fish are totally lost not only to the fishery, but to the future production of the species as well.

Sincerely yours,

BRUCE L. FREEMAN,
Marine Fisheries Administrator.

Senator STEVENS. Thank you for a provocative statement. We will go into that withholding later.

Mr. Puskas. Is that the way you say it?

Mr. PUSKAS. Mr. Chairman and committee members, thank you for inviting me to testify today.

My name is Louis Puskas, Jr., and I live in Barnegat Light, NJ. I am the owner of a 78-foot steel longline vessel, president of Viking Village Seafood, producer and wholesaler of fish and shellfish, and part owner of a large sport fishing dock. I am also a swordfish adviser to the Mid-Atlantic Management Council, and a director of the American Tuna Action Committee.

Since serving a 6-year hitch in the Coast Guard, I have been a professional fisherman for 28 years. This adds up to a grand total of 34 years on the high seas. I have fished for halibut in Alaska, swordfish in the Gulf of Mexico, king mackerel off Florida, marlin in the Caribbean, and swordfish off Grand Banks of Newfoundland. I have fished extensively from the tip of Georges Bank to Key West FL, although most of my time is now spent between Cape Hatteras, NC and Georges Bank.

I battled many winter storms. I sunk two boats, have been rescued twice from a life raft. After all these years, if I am not an

expert fisherman, I am certainly an expert in a life raft. Even after all these hardships, life was exciting and one could make a good living at fishing but it is not the same anymore. First came the large superseiners from the west coast and disseminated our bluefin tuna stock. Next came the giant foreign factory ships that destroyed our inshore ground fisheries, which to this day have not yet recovered. We went to work fighting for the 200-mile limit which we finally got in 1976. The only problem with this was that tuna fish were excluded.

As a result of all this, we were forced off our traditional grounds and had to look elsewhere to create new fisheries in order to survive. We found the tilefish grounds for swordfish and later tuna. Because of the large number of foreign longline vessels fishing for tuna in our waters, we found it nearly impossible to fish.

Four years ago I testified at a congressional hearing, and the reasons were to try to have tunafish included in the 200-mile limit in order to protect the giant bluefin tuna from spawning in the Gulf of Mexico for foreign longliners, and to salvage our swordfish industry.

In the summer and fall of 1981 it reached a point where the Japanese actually took over the prime swordfish grounds, and many of us were forced to look for other fisheries. Even though we were not successful in having tuna included in the 200-mile limit, the Japanese were pressured into leaving the gulf. In September 1983 we also succeeded in moving the foreign longliners outside a so-called 100-mile zone for 6 months of the year, June 1 to December 1. This move enabled us to increase our catches of swordfish, and at the same time created a new longline tuna fishery.

When the Japanese could not catch enough bigeye tuna outside the 100-mile zone, their fish brokers stampeded to our docks to export our fresh bigeye tuna to Japan. Prices skyrocketed overnight from 50 cents a pound to a high of $6 and an average price of $3. We also developed a domestic market for fresh tunafish. This encouraged us to fish 12 months of the year instead of 6.

Now it is back to the drawing board. We now have 430 swordfish boats and are competing once more with the Japanese for fishing room inside our 200-mile limit, and there can be no harmony with foreign longliners in American waters. We have enough competition among ourselves, and the fish conserved by us for U.S. management plans only to be harvested by foreign fishermen add insult to injury.

And even after the 100-mile zone conflicts still occur—and I am going to give you an example of just a very few conflicts that I got off a handful of boats. I would have gotten more, but most of them are out fishing.

The amount of hooks that each foreign longline vessel sets equals an average of 10 United States vessels. If the foreign vessels beat us to the grounds, there is no space left for us. If we get there first, they often set their gear over us. I have listed a sample of gear problems from my log and the logs of several other boats.

December 1, 1983—the first night foreign vessels allowed inside 100-mile zone.

Captain Louis Puskas, *Olympic Javelin.*

Set swordfish gear at Loran C bearings 26795 40994.

Japanses longline boat *Shmi Maru,* No. 18—started to set at midnight December 1, 1983—8 miles of my longline gear tangled and forced to leave fishing grounds.

Captain Lance Hallock boat *Provider III* also left grounds because of Japanese vessels.

December 1, 1984—Japanese first night on fishing grounds off Oregon Inlet south of Norfolk Canyon. *Tomi Maru* set over American longline boat *Seeker II* and *Canyon Explorer*, Captain Murry Cudworth, North Carolina—gear tangled. Second night *Susi Maru* on contact, 12 miles of gear tangled with *Olympic Javelin*.

December 2—Longline boat *Willbegone* tangled with Japanese. Another United States longline boat did not set because Japanese were in the way.

December 9, 1984—*Shmi Maru* No. 18 Loran bearing 42400 26560, tangled with *Lady Alice* longline boat.

February 24, 1984—Japanese longliner *Shoe Moo Maru* No. 18. Fishing N to S between 36°-30' in 500 fathoms 35°-30'. Three nights in a row tangled gear set by United States vessel *Theodora*. Caused gear loss and lost fishing time estimated at loss of $7,000.00.

Japanese longliner *Tucka Torrell Maru* W 40°-03' tangled with gear from United States vessel *Theodora*.

1-5-85 W 68°-33'

1-6-85 lost gear, fish and time W 40°-12'

1-7-85 lost gear, fish and time W 68°-01'

1-8-85 lost gear, fish and time

Observer was sleeping when they came through my gear at 10:30 PM.

Estimated loss $4,000.00.

Japanese longliner No. 18 tangled with gear set by vessel *Theodora*.

2-10-85 fishing between 26821 41286 26820 41159.

2-11 tangled—lost gear, 2-12 tangled—lost gear, estimated loss $4,000.00

January 10, 1985—Tim Malley 73' longline boat *Sea Gull* tangled with *Tomi Maru* at 40° 11'N 67° 42'W

Lost four miles of gear.

March 1-4, 1985:

Boat *Seeker II, Olympic Javelin, Theodora, Sea Gull*, fishing in area with Japanese boat, *Ryko Karu*. All four of these boats got their gear tangled with Japanese vessels.

Tomi Maru and *Yacho Maru* 39° 51'N 67° 57'W.

There is no doubt that the bluefin tuna are slowly recovering. Great catches have been made by Japanese longliners in January, February, and March of this year inside our 200-mile limit.

New Jersey sports fishermen last week landed good catches of small bluefin in the 15–20 pound class, the first good sign of small bluefin caught by sport boats in many years. Bluefin have also shown up in fair numbers off New England this summer.

Even though the bluefin stocks seem to be recovering, the present system of managing bluefin internationally leaves a lot to be desired. As a longliner I am allowed one bluefin per trip and none since last Friday when the longliner quota of one per boat was filled.

During the first 3 months of this year six Japanese longliners, some capable of holding 300 tons of fish a piece, fished New England and Mid-Atlantic waters and had near-capacity loads, a good portion of which were bluefin.

Four American boats, one of which was myself, in the first week of March tried to fish in that area, but because we could not keep any bluefin, and we were forced to kill too many of them by letting them go dead, were forced to leave the area, and at that time the tuna were worth $3 a pound. So we were forced to go back bottom fishing and could not compete in that fishery. So this left a valuable fishery in United States waters managed by the Americans strictly to the Japanese.

We were also very upset over the fact that if we go over the quota by even one fish, we are subject to heavy fines, constant boarding with guns by the United States Coast Guard and National

Marine Fisheries Service looking for bluefin, and if the Japanese exceed their quotas, nothing is done about it. And if we ever do get control over the bluefin, the longliners like myself would like whatever tonnage that was caught inside the 200-mile limit by the Japanese to be allocated to American longliners.

We strongly support Senator Lautenberg's amendment to include tuna in the revised Magnuson bill, and this will allow the east coast tuna and sport fishermen to get fair and equal treatment and develop our fisheries to the fullest.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR LAUTENBERG AND THE ANSWERS

Question. What would happen to the U.S. longline fishery if U.S. fishermen did not have to compete with Japanese longliners?

Answer. Without the 100-mile zone from Hatteras north to the New England, which was established in September 1983, we would not have the longline fishery we have today. When that zone became effective, our swordfish and tuna landings increased dramatically. Prices for tuna also increased domestically and for exporting.

I also strongly believe the swordfish stocks are increasing in numbers directly related to the removal of Japanese longliners from prime swordfishing grounds, from the 100 to 500 fathom curve. It can be seen in the large numbers of small fish being caught since 1983. Before that time, 20 to 46 Japanese longliners fishing for swordfish without any observers monitoring their catches took fish by the thousands; we have no records of their catches.

We must remember that the 100-mile zone is only effective from June 1 to December 1, when the Japanese come back into our waters. In order to develop the East Coast fishery to the fullest, we should remove foreign boats for the whole 12 month period. When they return in December they force U.S. boats off the prime fishing grounds and the fish go in their holds instead of ours. We end up with broker trips; we cannot afford to get tangled in their gear and get pushed off the prime fishing grounds.

Without Japanese competition, there will be 700 tons of bluefin tuna swimming around inside our 200-mile limit that could be caught by U.S. boats, as well as swordfish, sharks, billfish and other species of tuna. I believe our East Coast fishery for both sport and commercial vessels is more valuable to the U.S. economy, covering boats from Maine to Texas, than the catches of West Coast tuna boats which are caught and exported in cans back to the U.S.

I believe at the rate the West Coast tuna industry is declining from 140 superseiners four years ago to 85 at last count, wiping out tuna in 300-ton sets around the world, that soon our East Coast fishery will be Number One, and we should take care of it.

The sad, frustrating result of allowing the Japanese longliners in our waters is that we must by law throw overboard the bluefin tuna we hook, to conserve the fish, only to see the Japanese boats alongside us reap the harvest in our own waters. The same thing is bound to happen when we implement the swordfish plan, as presently proposed. We will be prohibited from taking swordfish during the closure period, and the Japanese will be slaughtering them.

Question. Observer data indicates that there is just a small bycatch of swordfish by Japanese fishermen. Do you think this data adequately reflects the effect the Japanese are having on the swordfish fishery: If not, why not?

Answer. No. Japanese longline gear is deadly on Swordfish as well as tuna. Swordfish bite mainly at night and tuna both day and night. Any Japanese tuna gear set even during one hour of darkness in an area where there are sword will catch swordfish, without a doubt.

Before September 1983, when Japanese were allowed to fish inside the 100-mile zone, they had very few observers aboard. Believe me, they caught thousands of swordfish. They were not logged, except when an observer was aboard and watching. Logging billfish caught in U.S. waters would definitely have affected their future negotiations for permits.

When the Japanese were moved outside the 100-mile zone in September 1983 all vessels had observers aboard. Fewer swordfish were logged, because there were fewer boats fishing in an area where swordfish were less plentiful. That was our reason for moving them.

But there are swordfish out there and they will be fished heavily by the Japanese off Virginia and North Carolina when they are allowed to return in December.

I believe the observers log what they see, but they do not see fish that fall off the hooks during high-speed haulbacks and ones cut off at the side of the boat, I also think they are put into the freezer holds unseen, and once inside a 60-below-zero freezer filled with tuna, they are not noticed.

Whenever we tangle with Japanese fishing gear, we saw plenty of swordfish on the hooks. When observers watch, we see them thrown overboard and left to float away, and we have movies of Japanese passing swordfish to American boats. We know plenty of cheap Japanese swordfish fillets hit the US frozen fish market.

No, I do not believe at all that what the observers log reflects how many fish the Japanese catch. I also do not believe they log all the bluefin tuna they catch outside the 200-mile limit, so that when they come inside they can catch more.

I have fished alongside the Japanese many years; I don't believe their logs, only their fish receipts when they settle up. In a South Atlantic Fishery Council news release August 5 Mr. Brawner states that restrictions on night longlining would burden the foreign fleet and they could not function economically if not allowed to fish 24 hours a day. What about the American fleet, and our economic crisis?

I would like to bring out one more point. Fifteen years ago off New Jersey I personally saw a dozen West Coast super seiners wrap up 30 schools of bluefin tuna sized up to 135 pounds, in less than two days. That was the end of my charter boat career. It has taken 15 years for 30 or more schools of tuna like that to be seen off Jersey at one time. This year five U.S. purse seiners followed those fish for days because the NMFA would not allow them to take that size. But we have nothing in our present regulations to stop any Mexican, Korean or any other country from sending boats to within 30 miles of our coast and seining those bluefin, wiping out the stock for another 15 years—or maybe forever.

What is great about our East Coast tuna fishery is that unlike Bluefin, the bigeye, albacore and yellowfin cannot be purse seined, only trolled or caught by longline. The fishery should be with us for a long time, providing sport and commercial stock for the entire fleet of East Coast boats.

Once more, I strongly urge the Senate to protect our fishery. I appreciate the chance to comment on this very important matter.

Senator STEVENS. Thank you, Mr. Puskas.

Mr. Burney.

Mr. BURNEY. Thank you, Mr. Chairman.

I hardly know where to start. I have been through this—I think this is the fifth time since I came back to Washington, DC, some 10 years ago. We thought we had resolved a number of the issues that are now being presented before you today with regards to a desire to change the juridical position on tunas.

I pointed out in my testimony that I do not believe it is in the economic interest of the United States, and it is certainly not in the interest of the resource itself to change our juridical position. The United States has been very effective in taking the lead in the international management and conservation of highly migratory species of tuna. Without our juridical position, we would not be able to take that lead.

It is common to walk into a forum of nations that do not have the same regard for conservation that we have. We must point out that we do not have the same juridical position as them, and that we are going to fight for the international management and conservation of the tuna resource.

Without sound management and conservation of tunas, we do not have a tuna industry in this country. We are a billion-dollar industry, Mr. Chairman. We caught 280,000 metric tons of tuna

last year. None of it was caught within the FCZ of the United States.

By contrast, Senator Lautenberg has pointed out that 537 tons of tuna fish were caught by foreign longline vessels off our east coast last year. We appreciate the fact that there are certain gear conflicts that occurred there, but we do not believe that they warrant changing our juridical position on tunas.

It was stated earlier by Robert Martin, representing the Mid-Atlantic Council, that our concern should be for the excessive burden placed on domestic fishermen. This is his way of addressing the need to change our juridical position on tunas. What about the domestic tuna fishermen that I represent?

It is a tremendous burden for us to go through this hearing at a time when we are trying to negotiate a treaty in the Western Pacific with 15 island nations. I believe Mr. Wolfe, who was here earlier today, alluded to these negotiations.

At a time when we are entering into protracted negotiations with Mexico and other countries in the eastern tropical Pacific it is tough for us to say, "Our juridical position is being tested again in the U.S. Congress."

We see no reason for this. We believe that there is ample authority under existing law to take care of the problems that have been raised here today. We have already addressed the incidental catch of billfish problems. The incidental take has been reduced 93 percent by working through the U.S. Billfish Management Plan. We have taken care of the Bluefin Conservation Program by working through the International Commission for the Conservation of Atlantic Tunas.

I realize that when we have a problem concerning reported gear conflicts, the first reaction is, "Why are those foreign tuna vessels there." This must be weighed against the fact that we have a valuable high seas tuna fleet that is worth over $500 million, and is the most productive fishing fleet in the world today. This fleet produces, as I said, 280,000 metric tons of tuna annually, which gives the U.S. consumer a low-cost, high-protein food source. We do not see why we have to keep going through these hearings. We are willing to work with Senator Lautenberg and with the fishing representatives from New Jersey to seek a solution to their concerns through existing law.

We have already met with the staff of the Senate Commerce Committee in an effort to address the issues. During that meeting everybody in the room agreed that the issues should be addressed through the billfish management plans. It may be true that this is a difficult process and that the Department of State makes statements to the fact that they do not want to jeopardize the ability of foreign tuna vessels to operate within our zone. However, if those tuna vessels are being operated in a manner that conflicts with U.S. management plans objectives, we would support efforts to correct this situation.

At the same time it does not make sense to jeopardize the U.S. tuna industry for the sake of the 537 metric tons of tuna that foreign longliners took on the east coast in 1984.

The gear conflict concern should be addressed and will be addressed. Working through the staff of this committee, through the

National Marine Fisheries Service and the Department of State, we will be able to rectify what is considered to be a serious problem today. We solved the other problems—as I said, bluefin conservation and the incidental billfish catch issue.

This is a far bigger issue than just looking at regional interests. In fact, we have no representation on regional councils, Mr. Chairman. We actually have no representation from California on this committee. We must look out for ourselves, and we believe that the facts support the need to retain our current juridical position on tunas.

Thank you.

[The statement follows:]

STATEMENT OF DAVID G. BURNEY ON BEHALF OF THE UNITED STATES TUNA FOUNDATION

Mr. Chairman, on behalf of the United States Tuna Foundation, a non-profit association consisting of U.S. tuna processors, U.S. tuna vessel owners and operators and U.S. tuna vessel crew members and cannery workers, I want to express appreciation for the opportunity to testify here today in opposition to S. 747.

If enacted, S. 747 would change the long-standing U.S. juridical position on highly migratory species of tuna. We submit that this would be contrary to the best economic interest of U.S. fisheries and in conflict with established principles of sound resource management.

Presently, tuna are exempt from the exclusive fishery management authority provided in the Magnuson Fisheries Conservation Management Act (MFCMA). The exemption is predicated on the fact that highly migratory species of tuna cannot be effectively managed or conserved in the same manner as standing stocks of fish. Since their annual migrations traverse the juridical zones of numerous coastal states and international water, it is conceded that tuna can only be effectively managed and conserved through international cooperation.

When introducing S. 747, Senator Frank Lautenberg stated that the United States should change its long-standing juridical position because in 1984, foreign tuna vessels caught more than 20,000 tuna in U.S. waters. While some U.S. tuna vessels catch 20,000 in a single day, the Senator's concern should be examined more closely.

The 20,000 tuna referred to by Senator Lautenberg actually translates to 537 metric tons. In order to put this tonnage figure in proper perspective, it should be compared with the U.S. distant water tuna fleet's production in 1984, which totalled 280,000 metric tons. It becomes patently clear that it is not in the best economic interest of the United States to jeopardize our distant water tuna fleet production merely to protect such a small amount of fish taken by foreign tuna vessels.

Senator Lautenberg also raises concern over the incidental hooking of billfish and sharks by foreign longline tuna vessels operating in our fisheries zone. This incidental bycatch concern was raised several years and resulted in a 1979 National Oceanic and Atmospheric Administration (NOAA) legal opinion which concluded that U.S. fisheries management plans could contain provisions to regulate foreign tuna operations, when such operations interfered with U.S. fisheries management plan objectives. As a result of this opinion, a number of regulations were implemented under U.S. billfish management plans which resulted in a 93 percent reduction of incidental billfish bycatch by foreign longline vessels. If further regulation is necessary, the legal precedent is there.

The United States strongly supports international efforts to obtain sound management and conservation of tuna in the Western Atlantic area (the area of concern to Senator Lautenberg). Working through the International Convention for the Conservation of Atlantic Tuna (ICCAT), the United States succeeded in obtaining international quotas for the highly valuable bluefin tuna stocks of the Western Atlantic area. These quotas assure meaningful resource management and have also significantly reduced the foreign take of bluefin tuna in the U.S. fisheries zone along the Atlantic seaboard.

In addition to the resource management reasons for retaining our current tuna juridical position it is important to remember that less than one per cent of U.S. tuna production takes place within our own fisheries zone. The vast majority of U.S. tuna production takes place in the Eastern Tropical Pacific Ocean and Western Pa-

cific Ocean where international agreements and cooperation are essential if we are going to have sound resource management and equitable access rights.

In this regard, the United States recently ratified the Eastern Pacific Ocean Tuna Fishing Agreement (EPOTFA) which establishes access rights for U.S. tuna vessels fishing for tuna in the Eastern Tropical Pacific ocean. The United States is also currently engaged in negotiations with 15 island nations of the Western Pacific ocean area aimed at establishing fishing rights for U.S. tuna vessels in the area. The U.S. Depart ment of State has testified on numerous occasions that our juridical position on tuna gives them the necessary leverage to negotiate such agreements.

Additionally, the Department of Commerce supports the U.S. juridical position on tuna. Representatives of the National Marine Fisheries Service (NMFS) have testified before this Committee on several occasions that tuna can only be effectively managed and conserved through international cooperation. Consistent with this position, the United States participates in several international tuna conservation regimes including the Inter-American Tropical Tuna Convention (IATTC), the Indian Ocean Fishery Commission, the South Pacific Commission, the Indo-Pacific Fisheries Council and ICCAT. Support for these international tuna organizations is essential if we are to sustain healthy tuna stocks in perpetuity.

Both a weighing of the relative economic interests and a review of our resource management objectives clearly supports the need to retain our current juridical position. If there is a need to address the concerns raised by Senator Lautenberg, it should be done through our participation in ICCAT or through the implementation of additional regulations under U.S. billfish management plans.

Mr. Chairman, the U.S. tuna industry is proud of the fact that it provides the U.S. consumer with a low cost, high-protein food source. We do not believe that this food source should be jeopardized by making any change to our current juridical position on tuna.

Senator STEVENS. Mr. Walsh.

Mr. WALSH. Thank you, Mr. Chairman. It is always a pleasure to come back to the committee and speak on fishery issues.

I will not repeat what Dave has already touched upon on behalf of the U.S. Tuna Foundation.

I represent the American Tunaboat Association, which is the association that represents our long distance tuna fleet. Unfortunately, the fleet is not as large as it used to be back when, as you recall, the committee fought with the tuna industry over the 200-mile limit legislation.

I think it is helpful to put that fight somewhat in perspective. When we decided on the policy for tuna in the context of the 200-mile limit, we made a fundamental political choice on national policy. We said we are going to exert jurisdiction over our 200-mile fishery resources because it made sense for conservation purposes, for juridical purposes, and for other purposes. But while we did that, we also knew that tuna, being highly migratory, could not be managed in the same way and that we had a substantial interest, on a national basis, to preserve that part of our fishing industry. In other words, we tried to balance all our national interests.

Now, as Dave has noted, periodically this balance has been tested, but what I find interesting is that it seems to be always a new group of people, and we find that we start from a tremendous information gap not only about what our industry does on the west coast in terms of producing canned tuna, catching it around the world from Papua, New Guinea, to the Solomon Islands to Peru, Panama, all over, to also getting adequate information on what is happening in these kinds of gear conflict problems that we hear about.

So, we think that in deciding whether there should be a change in national policy, we should do it the way it has always been done; that you weigh on the one hand the advantages of a change in

policy, and the detriments on a national basis, not just on a regional basis, and only take legislative action after you have decided that every remedy has been exhausted, every effort has been made to explore what the real problems are and to solve them in a manner short of changing legislation.

We believe if you go through that process again, you are going to come to the same conclusion: that this tuna policy is a zero sum game. If you eliminate the tuna policy, you take away our ability to deal with hostile countries around the world, in particular Mexico and some of the nations in the South Pacific that have seized our vessels.

We absolutely need the leverage, the advantage, the power that we have to negotiate with these countries on the basis of our tuna policy. And we are definitely interested in conservation. We do not want to see any of our resources put in the position where our fleet will decline even further.

When looking at this problem recently, one thing that did come out in our discussions, is and the reason we are reviewing it again today, is the success in dealing with this problem 4 years ago, in controlling the bluefin problem, in reducing by-catch, and in opening up opportunities for our own fishermen.

So what has happened, as we understand it from what we learned at the meeting we had with the staff and according to the National Marine Fisheries Service officials who were there, was that the domestic fishermen have increased their activities considerably, and as a result there is more crowding generally.

So, as is typically the demanded solution in these cases, the call is to boot the foreigner out to solve a management problem that is much broader than just foreign fishing.

We have looked at the information with regard to conflicts. We feel that any kind of gear conflict must be avoided, that steps must be taken to prevent it, and that compensation should be fairly paid if it does occur. But we have trouble understanding the allegation that the number of Japanese vessels that are involved creates such an enormous scareoff of American fishermen. For example, last year there were two foreign vessels operating in January, one in February, one in July, one in August, one in September. It grew to five in October, declined to three in November, and was at four in December.

Now, we really want to find out how serious this problem is, and we will support our colleagues in the domestic fishing industry on the east coast if there is, in fact, a serious problem, and we will support any reasonable effort to eliminate that problem. We do not believe the process of finding another solution has been exhausted or even tried very vigorously, so we request that this committee not change the tuna juridical position.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES P. WALSH, WASHINGTON COUNSEL, AMERICAN TUNABOAT ASSOCIATION

Mr. Chairman and members of the committee, I am Washington Counsel to the American Tunaboat Association (ATA). The ATA is a non-profit fishery cooperative based in San Diego, California which represents nearly all U.S. flag long-distance

tuna fishing vessels. The ATA fleet is made up of large purse seine vessels which catch skipjack and yellowfin tuna, principally in the Eastern Tropical and Central and Western Pacific Ocean.

We thank you for the opportunity to testify today on the Magnuson Fishery Management and Conservation Act (the Magnuson Act). From the perspective of the U.S. tunaboat owner, the provisions of the Magnuson Act concerning tuna jurisdiction, as presently written, remain absolutely essential to the economic viability of our tuna fleet. Without the continued strong support to our fleet provided by the present U.S. tuna policy, we stand little chance of achieving approval of the two multilateral tuna management treaties now pending or under discussion. Consequently, we support S. 958, to reauthorize the funding provisions of the Magnuson Act.

As this Committee knows well, the Magnuson Act does not assert management jurisdiction over tuna within the U.S. 200-mile fishery conservation zone. The Magnuson Act also directs the State Department not to recognize the juridical claims of any other nation over the highly migratory tuna in areas beyond 12 miles from shore. The rationale for this policy is compelling: no nation can effectively manage tuna when the fish travel through several 200-mile zone and through nearby areas of the high seas. Only a multi-national management system, covering broad tuna fishing areas, will be truly successful in conserving this fishery resource.

Presently, a new tuna management treaty covering the Eastern Tropical Pacific is awaiting approval by Costa Rica and other Central American countries. Discussions involving the United States and 15 nations in the Western Pacific Ocean over a new tuna agreement continue to go well. Without a doubt, the current U.S. tuna policy is a major factor that keeps these negotiations going. Accordingly, we urge the Congress to take no action that will alter the tuna policy now contained in the Magnuson Act.

We most strongly oppose those provisions of S. 747 that would alter the Magnuson Act policy on highly migratory fish. As to this proposed legislation, we wish to offer several comments.

First and foremost, this Committee has, on at least one occasion, reviewed this question in depth and refused to accept a similar proposal. Nothing has changed since the hearing held in 1981 on this subject. The supporters of S. 747 have offered no new information or arguments in favor of the change they seek. Furthermore, if anything, the case for changing U.S. tuna policy is weaker than ever.

Secondly, the recommended change would add no new authority to regulate fish bycatch that it not already has available to the Councils and the Department of Commerce under existing law. The need to regulate the bycatch of swordfish, shark and billfish is cited as a reason for amending the Magnuson Act. We believe that the bycatch problem can be adequately handled by the management tools already available to the U.S. government—observers, forbidden areas, time limitations and similar measures. The lawyers advising the National Marine Fisheries Service have already concluded that such measures are fully available to reduce or eliminate bycatch problems. Thus, there is no "unregulated" incidental bycatch. The U.S. now regulates foreign tuna fishing with closed areas, observers, and a management plan to prevent unreasonable harvests of billfish.

Finally, Mr. Chairman, we understand that certain fishing interests on the East Coast feel "closed-out" by continued Japanese tuna fishing off their shores. While we fully understand their desire to catch more fish, we cannot agree that a change in tuna policy (something very harmful to our interests) is needed to increase their catch. According to NMFS statistics, most tuna caught by Japanese fishermen is caught outside 200 miles. Also, the bluefin fishery is subject to international regulation through ICCAT and the U.S. and Canada already get the lion's share of the allowed harvest. Finally, the Japanese do not compete in the same market with East Coast fisherman for sales of bigeye, yellowfin, and tunas other than bluefin. So we see no real impediment to a doubling or even tripling of the U.S. catch of these species, regardless of the presence of the few Japanese vessels (one to five a month, depending on the season) that fish in the area. We cannot see how Congress could embrace a policy change that could cost our fleet 280,000 metric tons of fish simply because of vague feelings that it might lead to more tuna catches on the east coast.

For these reasons, we urge the Committee not to adopt the tuna amendments contained in S. 747.

This completes my statement. I will be pleased to answer any questions you may have.

Senator STEVENS. Thank you.

I just have a couple of questions, and then I want to run off. We are going to have a vote soon.

Mr. Burney and Mr. Walsh, why should any foreign fishing vessel be allowed to have an 80-mile fishing line within our 200-mile limit? Now, I understand we have got foreign tuna vessels coming into our——

Mr. WALSH. Ex-tuna vessels, Senator.

Senator STEVENS. No. These are tuna vessels. I was told tuna was up in the North Pacific this last year, and heads are shaking back there. Now, you start putting 80-mile lines in where we have everything from trawl gear to pots.

Why 80 miles? Is that not the problem? As I understood this comment, you take a 80-mile line, and man, it can tie up just one whale of a lot of gear in a day if it is going through domestic fishing waters.

Now, has the Foundation done anything about that, Mr. Burney?

Mr. BURNEY. First of all, the Foundation has done nothing with regard to foreign longlines because we are not involved in that fishery. We do not longline. All of our boats——

Senator STEVENS. I know that, but you are protecting the longliner.

Mr. BURNEY. We are not trying to protect the longliner. What we are really trying to protect is our juridical position. We believe that under existing law, the billfish management plan in particular, that if there is a gear conflict that is impacting on U.S. management plan objectives we have the right to take whatever action is necessary.

It may very well be that longlining in any zone creates a conflict, as you point out with these 80-mile lines. But you have also got to bear in mind that there are U.S. vessels longlining today as well.

Senator STEVENS. With 80-mile lines?

Mr. BURNEY. Not as long, not as long as 80, but they are still longlining. So the question is do you restrict longlining, do you restrict the length of the lines? We have no objection to that. We have never once said we quarrel with the fact that something should be done. If longlining conflicts with U.S. fishing interests something should be done.

One, we want to make sure it is a legitimate problem. Then, No. 2, we will support whatever action is necessary to protect U.S. fisheries. We have no problem with that at all.

Senator STEVENS. I think you should—well, let me request that you do look into it. It is your clients who have the problem here, because Senator Lautenberg has come forward with a change in the basic law in his proposal, as I understand it, and we fought long and hard. We would not have gotten this bill passed if it had not been for that exemption; and I very frankly think that we might end up with no bill at all if we tried to have that battle again. But I do think the American Tuna people and the Foundation ought to help us find some way that we might assert some Federal jurisdiction over the size of gear for even those vessels that are exercising rights under the migratory exemption under this act.

Could you look into it and give us your ideas on that?

Mr. BURNEY. Yes, we will.

Senator STEVENS. Thank you.

Senator GORTON. I do not have any questions of these witnesses. Their positions are very clear.

Senator LAUTENBERG. Just a few things, Mr. Chairman, while I know we will have to vote soon. I will try to make it quick.

Mr. Walsh, you had service here before I did.

Mr. WALSH. I was not a Senator.

Senator LAUTENBERG. I know that, but you apparently learned your present job well, because as I see you making the argument and I hear Mr. Burney, you talk about the juridical position, and we talk about if it ain't broke, why fix it, et cetera, et cetera. And I do not hear anybody saying that there is a problem out there.

Do either of you see a problem, or is it a figment of the imagination of someone like Mr. Puskas who is out there on the sea?

Mr. WALSH. No. As much as anything, Senator, it is the fact that we did not know there was a problem until—we had not heard there was a serious problem until your bill was introduced. In other words, we had gone through identical hearings.

Senator LAUTENBERG. By "serious problem" do you mean that you did not know it had gotten this far or do you mean that the problem existed but no one picked up the rock to see what was under it?

Mr. WALSH. We had not heard, either from the State Department or from the National Marine Fisheries Service and even from our colleagues on the east coast that this had become such a serious problem. Mostly we heard that the efforts that were taken after 1981 and 1982 with ICCAT and with the billfish plans solved most of the problems.

Then a bill appeared, and our feeling is we must not have done our homework. How could this have gotten to the stage of legislation, and we do not know what the problem is? So quite frankly, we are sitting here still somewhat dumbfounded and not truly appreciating the depth of the problem before it went to legislation. That is our position.

Senator LAUTENBERG. I would submit that if you were watching the scene, as both you are required to do professionally, you would have heard there was a problem. This scuttlebutt has been coming to me for some time. It did not just show up yesterday. And I used the term "scuttlebutt" because of the manner in which you treat it.

The fact is that we do not want to restrict the long distance tuna fishermen. We do not want to, but we do want to help solve a problem that is very serious off New Jersey and the rest of the Coast Guard.

Mr. Freeman, is New Jersey the only State that has a problem with this?

Mr. FREEMAN. No, Senator. New Jersey has a very active longline fleet, and they are instrumental in developing the tuna fishery. But New York has the same problem, the State of New York; Maryland, which has a relatively large number of longline fishermen; the various coastal States that do at one time or another become home port to these vessels have this very same problem. The fishermen essentially work on the same grounds, whether they are from New Jersey, New York, North Carolina, South Carolina.

They essentially fish the same areas, and they have the same problems.

Senator LAUTENBERG. So, longline it is not a State problem. It effects all domestic longline fishermen who fish off the east coast.

The Canadians, I believe—include tuna in their 200 mile zone—is that correct——

Mr. FREEMAN. That is correct.

Senator LAUTENBERG. Can we justify that position in any way, Mr. Burney, Mr. Walsh, their concerns about their own fishing fleet, I take it?

Mr. BURNEY. I think you have to look to each country on the basis of their own tuna production. The U.S. fleet has always been recognized as probably the largest and most modern and efficient fishing fleet in the world with regard to tunas, and as a result, we have looked to the conservation of the resource as a very important part of our future.

The Canadians are not that involved in light meat tuna production. They do fish for albacore tuna on a smaller scale, the same that we do in this country. When you talk about light meat tuna, production you are talking two countries predominantly, and that is Japan and the United States. Mexico is now becoming a major factor in the tuna business and they are now facing the same problems that we have faced.

Senator LAUTENBERG. Mr. Walsh, you describe hostile countries. Some of the South Pacific nations I guess can be described that way. Japan is not someone that we can describe in that way, can we?

Mr. WALSH. Well, we do not fish off Japanese——

Senator LAUTENBERG. Right.

Mr. WALSH. Japan is a competitor.

Senator LAUTENBERG. A very serious competitor, and it is not one of those that we have to be overly concerned about offending in any way. Japan comes into our markets selling manufactured goods of all kinds. We should not be overly solicitious in terms of permitting them to fish our grounds. So they should not be a factor. It is Mexico and Peru and some of the other South Pacific nations off whose shores American vessels fish that we should be most concerned about.

Mr. WALSH. Well, I think the question of dealing with the Japanese means that you are establishing a policy for all fishing within our waters regardless. You cannot just select out Japan.

Senator LAUTENBERG. No. That is right. We are not here to single out Japan.

Mr. WALSH. We just feel that inherently you have to take one straightforward position on tuna. That is the way the world has come down. And for our fleet, because it is so dependent on fishing, wherever the fish go—I mean a couple of years ago the fish were in the Central and Western Pacific in copious amounts, and we could not find them in such great abundance in the eastern tropical Pacific. It is now switching. The fish go thousands of miles. And when countries like Peru say they want to kick out the U.S. fishermen, then they buy tunaboats, and then they cannot make them pay because they cannot fish in Ecuadorian waters. They are beginning to get the point, that you cannot fish tuna except as they migrate,

and the only way to manage them is on a migratory basis wherever they show up. And we think that that is such a compelling reason, even for the bluefin.

The bluefin here, 51 percent of all the bluefin is caught in our 200-mile zone. The rest is caught outside. And if somebody wanted to go outside and fish bluefin, then we argue about straddling stocks, I guess.

Senator LAUTENBERG. How much of the tuna do we find caught outside the 200-mile limit?

Mr. WALSH. I have some figures. I have these figures on tuna catches in the western Atlantic, and this is information supplied to us by the National Marine Fisheries Service.

United States and foreign fishermen within our U.S. FCZ catch about 51 percent of the bluefin. That, of course, is under ICCAT where the United States and Canada get 73 percent of the entire allocation; bigeye, 12 percent.

Senator LAUTENBERG. Twelve percent outside?

Mr. WALSH. Within the U.S. 200-mile zone, within the 100-mile zone that they are allowed. Plus our fish catch, 2 percent of the yellowfin and 2.5 percent of the albacore in the western Atlantic alone. Of course, when you compare that to the enormous catches of these species that go on in the Pacific, they are small—not to say inconsequential because of the fishermen who would catch them, but overall it is very small in our 200-mile zone or what is effectively a 100-mile zone now.

Senator LAUTENBERG. That is why we see those fleets more on the east coast than we do on the west coast.

Mr. WALSH. No. Well, the fish that they are looking for are not found right off our west coast.

Senator LAUTENBERG. OK. I will close with one more thing, Mr. Chairman, and that is, with these gear conflicts it is not simply a matter of compensating for the gear lost. Gear conflicts discourage fishermen, American fishermen from going into the area. Who wants to take on a battle like that? And when you lose a day's wages—and I know how the fishermen are pressed to pay off their obligations and take care of their family needs—it has a dramatic and it is not easy for a fisherman to understand.

I would invite you, Mr. Burney and Mr. Walsh, to join in, help us solve the problem on the east coast. It does not have to be 200 miles if there are other ways to solve it. And I thought Senator Stevens hit it one point right on the head. He said if this longline gear is so extensive, then maybe you ought to come back with some suggestions that would help us in other areas of the country solve the problem.

Thank you very much, Mr. Chairman.

Senator STEVENS. I want to make sure that all statements of all witnesses that were summarized will be printed in full in the record. There have been quite a few that were summarized and skipped, so we want the testimony in the record.

Senator GORTON. Every witness statement will be included. We are going to keep the record open for additional statements until the recess at the end of next week. There will be more questions which I suspect we will submit to you in writing.

Finally, Senator Stevens, Senators Hollings, Packwood and Roth all had opening statements, and we will include them with the opening statements of the other Senators at the beginning of the hearing.

Thank you. The meeting is adjourned.

Senator STEVENS. Thank you all very much.

[Whereupon, at 4 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of the National Coalition for Marine Conservation, Inc.

The National Coalition for Marine Conservation, Inc. (NCMC) is a non-profit organization representing marine recreational fishermen in every coastal state of the nation dedicated to the conservation of living resources and the protection of marine habitat.

The NCMC was one of the earliest proponents of comprehensive legislation to conserve and manage the nation's fish resources, an effort that culminated in the passage of the Magnuson Fishery Conservation and Management Act (MFCMA) of 1976 (P.L. 94-265). As veterans of the initial Congressional campaign with an abiding interest in fisheries conservation, we have watched closely the implementation of the MFCMA and the evolution of fisheries management under the law over the last decade. It has been a learning experience for all concerned, one marked by some amount of success and not a little frustration.

Even so, the "MFCMA experiment" is no longer that. After ten years of implementation, the MFCMA has proven to be our best hope for establishing a working system whereby the many and varied interests in marine fisheries can be accommodated within a broader national goal of conserving fish resources for their continuing and long-term value to the nation as a whole. Despite or perhaps because of the deficiencies that have emerged during the ongoing MFCMA process and which have retarded our progress toward this common goal, it is important to reaffirm the MFCMA as the most important marine conservation legislation in the nation's history and to make the most of this opportunity to improve the law and enhance our ability to protect and maintain our marine fisheries for the benefit of all.

Sorting through the myriad issues that have been raised concerning ways to improve upon the MFCMA during this Congressional reauthorization process, the NCMC chooses for the purposes of this hearing in the Senate to focus its attention upon two issues we believe to be the most urgent and far-reaching in impact. These are: the inclusion of *all* highly migratory species, i.e., tunas, within the exclusive management jurisdiction of the United States; and the consideration of fishery habitat needs of marine fisheries in the development and execution of Fishery Management Plans. Provisions dealing with both these important issues are contained in S. 747, the Marine Fisheries Improvement Act (Sen. Lautenburg, et al.), which the NCMC fully endorses.

This is not the first time the NCMC has argued before Congress for the inclusion of tunas under the MFCMA. We strenuously objected to the tuna exemption at the law's inception and have returned to Congress on a number of occasions to seek redress of this regrettable omission. We believe the past ten years have proven without a doubt that excluding tunas from U.S. fishery conservation and management authority, for reasons entirely unrelated to sound fisheries management, was a serious mistake that has done far more harm than whatever good was supposed to result.

The tuna exemption was made in order to protect the interests of the San Diego-based domestic tuna fleet fishing in the waters of foreign nations bordering the Pacific Ocean, the reasoning being that if the operations of foreign tuna fishermen were excluded or even somehow restricted in the U.S. Fishery Conservation Zone (FCZ), then other countries would feel justified in restricting or shutting out our fishermen. Of course, this completely ignores the fact that many already do. Countries such as Costa Rica, Peru and Papua New Guinea, who claim exclusive jurisdiction over all fisheries in their waters, have seized U.S. vessels operating illegally in their coastal waters quite irregardless of U.S. policy. The bad feeling generated between the U.S. and these and other Latin American countries over our arrogant tuna policy has inhibited, not helped, the ability of our fishing industry to negotiate fishing agreements with foreign nations. It is increasingly evident that the U.S. stands virtually alone among the nations of the world in its position on this issue.

The decision to exempt tunas was based strictly on the economic interests of one small, albeit politically powerful, segment of the U.S. fishing industry—the distant

water tuna fleet. This is contrary to the basic management philosophy defined by the MFCMA for every other fishery except tunas; National Standard No. 5 specifically forbids any "measure" from having "economic allocation as its sole purpose." (Sec. 301(a)(5)) The sole purpose of the tuna exemption is State Department concern for the profitability of the west coast fleet's tuna operations within the waters of other nations.

Present (non-)management of tunas also contradicts U.S. management policy toward other migratory fish. The authority for regulating fishing for coastal migratory species (bluefish, striped bass, etc.), which range primarily within the territorial seas but regularly cross over the boundaries of several states, is given exclusively to the individual states with interstate cooperation recommended but not mandatory. In this instance, the U.S. government appreciates the effectiveness of interstate management throughout the range of the fish but also recognizes the sovereign right of the states to make laws regulating the catch of fish in their territorial waters.

It would seem logical to apply this thinking to highly migratory species as well, but that is not the case with tunas, although that is exactly what has been done with non-tuna species. And herein lies another contradiction. Defenders of the tuna exemption like to argue that the highly migratory nature of tunas means they can only be effectively managed throughout their biological range by international agreement. But it is even more obvious that economics and not biology was the determining factor for exemption when one considers that such equally highly migratory species (using the MFCMA's own definition for tunas those fish that, "in the course of their life cycle, spawn and migrate over great distances in waters of the ocean") as swordfish, marlin and pelagic sharks are included under the unilateral management of the MFCMA.

This brings us to the most frustrating and damaging aspect of the nation's convoluted policy toward tuna management—its impact on the conservation and management of billfish and other oceanic pelagics. The favored method of foreign fleets fishing for tunas within the U.S. FCZ is longlining. Two facts about the foreign longline fishery demonstrate the problem. First of all, longlines are non-selective, in other words, the hooks do not differentiate between a bluefin tuna or a blue marlin. Secondly, blue and white marlin, swordfish, and several species of oceanic sharks in the Atlantic and billfish, dolphin and wahoo in the Pacific inhabit the same offshore environment and ocean depth as the tunas sought by the longliners. The result is a constant and unavoidable by-catch of these non-target fish. The law requires that billfish hooked on longlines be released, but at least two thirds are dead upon release and of the rest, most are presumed to die shortly thereafter. The unregulated conduct of this indiscriminate foreign fishery within the U.S. 200 mile limit has contributed substantially to the present decline of several of these species, most notably the marlins and swordfish.

Because fishing for tunas is excluded from regulation under the MFCMA, the Regional Fishery Management Councils are unable to enact any restrictions upon foreign longliners, even in carrying out their mandated responsibility to conserve and manage stocks of billfish, swordfish, sharks and other pelagics. These are fisheries of enormous economic and social importance to the U.S. fishing, recreation and tourist industries on the Atlantic, Pacific and Gulf coasts as well as the Caribbean and western Pacific. Work on Fishery Management Plans for these species began in earnest in 1977. Nine years later we do not have a single billfish or swordfish plan. Why? Because the State Department, ever on the alert for any measure that would restrict foreign tuna fishermen, has blocked every Council proposal to limit the foreign by-catch of billfish and swordfish and thereby has asked U.S. fishermen to shoulder the burden of conservation entirely. As recently as May of this year the State Department threatened to block the just-completed five Council swordfish plan if measures designed to prevent an increase in foreign by-catch were not deleted.

The ability of the U.S. to manage and conserve fishery resources within our 200 mile zone for the benefit of all American fishermen has been severely limited by the MFCMA tuna exclusion. It is time to quit this charade and to restore reason and principle to our national fisheries policy. By including tunas under the exclusive management authority of the U.S., we would enhance, not hinder, our status in negotiations with foreign nations in international forums. And we would free the Regional Councils to conduct the business of conserving and managing our marine fisheries in a timely and effective manner.

The National Coalition for Marine Conservation strongly urges the Committee to adopt the provision contained in S. 747 (Sec. 4) which would amend the MFCMA to include highly migratory tunas under the law.

The other issue that we wish to address and for which we seek the Committee's full support is the consideration of fishery habitat needs in the development of Fishery Management Plans as prescribed by the FCMA.

The accelerating rate at which the nation is losing prime coastal wetlands and estuarine habitat for marine fisheries is alarming and makes clear that merely regulating fishing mortality through quotas, closures and gear restrictions, etc. is no longer enough to restore stock abundance and to preserve future productivity. The quantity and quality of marine fish habitat, areas where fish spawn, nurse, feed or seek shelter, determines to a large extent the abundance of fish populations. The conservation of habitat is thus an integral part of management, without which the objectives of Fishery Management Plans will likely not be achieved.

The National Marine Fisheries Service (NMFS), the federal agency with responsibility for the conservation and management of marine fishery resources and fishery and habitat research, adopted in 1983 a Habitat Conservation Policy recognizing the critical need to understand and conserve the habitats of marine fish species that are being managed and those which managed species depend upon for their survival. The NMFS policy recommends that the Regional Fishery Management Councils take into consideration habitat conservation in each Fishery Management Plan they develop, and that all federal agencies whose decisions or activities affect habitat, including NMFS, cooperate with the Councils in implementing this policy. Unfortunately, these are only recommendations and statements of intent.

The NCMC advocates codifying the NMFS Habitat Conservation Policy into the MFCMA to require that habitat needs are indeed addressed as a vital component of fisheries management. S. 747 (Sec. 9) features a number of provisions to accomplish this. We emphasize the following:

1. Require the Regional Fishery Management Councils to include information on habitat needs in all Fishery Management Plans, by identifying critical habitat areas for each fishery, the current and potential threats posed to the integrity of that habitat, and actions necessary to conserve or restore the habitat, and require the Councils to amend existing plans with the same purpose;

2. Require the National Marine Fisheries Service to supply, to the best of its ability, all information required by the Councils in assessing fishery habitat needs, and to assist in obtaining similar information from other federal agencies;

3. Require all federal agencies to respond in writing within 60 days to Council recommendations to conserve, maintain or restore necessary habitat, and to provide a full explanation of the agency response within the same time period.

4. Require the Secretary of Commerce to consult with the Councils regarding information needs for the purpose of developing research programs to meet those needs.

We urge the Committee to approve the habitat provisions of S. 747 to amend the MFCMA, with the following addition:

5. Require that federally-approved projects that cause damage to marine habitat identified by the Councils as necessary to fishery production include plans for immediate mitigation of those damages.

In recognition that it is not the intent of these amendments to obstruct development projects that are vital to the welfare of the community and that therefore certain actions resulting in the destruction or alteration of fish habitat will occur, the law should require the federal agency involved in the proposed action to ensure that steps to mitigate the environmental damage are taken concurrently.

No fishery management plan should be rejected strictly on the basis of unavoidably incomplete information on habitat. By the time a plan is undertaken there is usually too much at stake to cause an unreasonable delay in the implementation of conservation measures. Likewise, no plan should be approved unless the fullest possible consideration is given to the need to conserve and protect the habitat the fish require for their basic survival. To do less is to leave half the job undone.

Statement of Harold Sparck

Thank you Mr. Chairman for allowing Henry Mitchell of the Bering Sea Fishermen's Association to place my testimony into the record of the Committee.

My name is Harold Sparck, Director since its inception in 1973 of Nunam Kitlutsisti. Our group's name translates from Yup'ik Eskimo as Protectors of the Land. We act as resource advisors to the 57 Alaskan Native villages of the Yukon-Kuskokwim Delta in southwestern Alaska. Because of our technical knowledge of fisheries, we also assist other groups throughout Western Alaska in coordination with the Bering Sea Fishermen's Association.

I would like to divide my testimony into two parts. First, I would like to talk about an economic disaster now occurring on the Kuskokwim River that is caused by technical weaknesses in the existing Magnusson Fisheries Conservation and Management Act, and the lack of political resolve to make what is right in this Act work.

Second, I would like to suggest to the Committee technical amendments that could correct those deficiencies. These amendments would bring to a close the current difficulties being experienced by the Kuskokwim and other in-shore domestic fisheries now being decimated by off-shore foreign and domestic interception fisheries.

THE KUSKOKWIM SITUATION

The Kuskokwim River's commercial salmon fishermen are suffering through an economic and conservation disaster as we talk. There are no salmon in the river, and there is no commercial fishing.

The Kuskokwim River supplies the nutrient for the largest population of indigenous Native Americans in the North American continent, the Yup'ik Eskimo. This ethnic group still maintains itself as a hunting-gathering society. For a period of months in the summer, the community puts aside its culture, and intensively fishes returning natural stocks of salmon for its single cash economy. There is no other economy on the Kuskokwim except Government, which has many limits, and is declining as a revenue source.

Safeway Stores do not exist in these villages. The people by economic necessity must harvest protein from the land. The Yup'iks use their cash from fishing to keep their houses warm and lighted, and to pay for transportation expenses necessary for the harvest of local protein. They have faced adversity through the time of westernization, but at no time did they have to put up with the nonsense that currently occurs in the migratory range of their salmon in the oceans under the auspices of the MFCMA.

A. The Kuskokwim Chum: For the first time in the 25 year history of commercial fisheries on this second largest of Alaskan Rivers, there is no commercial chum or dog salmon fishery. The complete closure of all commercial fishing for chum follows recent emergency efforts by the State of Alaska to eliminate directed chinook or king salmon commercial fishing on this river in this same year.

Alaska's managers of wildlife, the Department of fish and Game and its regulatory body, the Alaskan Board of Fish, have understood for many years that the increasing level of interceptions by offshore foreign and domestic drag fleets, and the Japanese high seas gill net fishery, exacerbated by a cape interception fishery within Alaska's territorial seas, has reduced the biomass of Kuskokwim salmon. But the State pleads it is powerless for the majority of the interception which occur are within the Extended jurisdiction and the high seas. Under the MFCMA, these salmon would be protected by the anadramous species provision of the Act, but the United States has consistently failed to enforce this section at all.

The State chose to cut the domestic in-shore fishermen to conserve the remaining chinook stocks. The State eliminated large mesh gear to allow 6-7 year old chinook females to reach the spawning grounds. Since the beginning of the commercial fishery in 1960, 1985 was the first year without a directed king salmon fishery. The State gambled that the normally adequate chum runs when fished intensively from their commercial onset would allow the fishermen to make up the lost chinook money through tonnage. The State replaced one bad problem with another, for the chums did not show up. The State failed miserably, and it was the domestic fishermen who were made to pay for the excesses of other in the high seas allowed under the MFCMA.

It is too early to tell what happened. The Kuskokwim is a muddy river. The technology to count salmon during the harvest does not exist. Managers still operate by rudimentary guesses on run strength. But there was no prior indication that the chums would not show up. Even when the kings began to disappear, the chums showed in great numbers. They did not seem to be affected by the Japanese gill net fleets. Missing this year is the five year old chum.

Last year, the developing American drag fleet finally caved in to increasing pressure from the North Pacific Fisheries Management Council to come up with its own 1984 figures on by-catches of fully utilized fisheries. Herring, halibut, crab, and salmon comprise species fully utilized by existing domestic fleets.

The American draggers were in their first year of 100,000 ton plus bottomfish harvest in 1984. Chum salmon became a test case. This industry calculated that it took

1.4 chums per ton of bottomfish. They took 150,000 tons of bottomfish. That would mean 200,000 4 year chums.

Those on this Committee may remember in the post MFCMA days and 2-3% observer coverage that the rule of thumb in the Bering Sea was to take the by-catch figures supplied by the foreign fleets and multiply that figure by three to arrive at a best-guesstimate. Multiplying the figures supplied by the domestic draggers would produce a 1984 by-catch of 600,000 4 year old chums, and could help account for the 1985 disappearance of 5 year old chums not only from the Kuskokwim, but other Western Alaskan spawning rivers this year.

Even though the American drag fleet sells its fish to foreign processors, this fledgling industry waves the flag and fights at the mention of domestic observers. They just want to be left alone to make their money. They have been very successful to date. There are no domestic observers on the American drag fleet.

Members of this Committee may remember the last time Western Alaskans were faced with a similar problem of joint venture processing that threatened our way of life and limited livelihood. We were successful in Federal Court. From that success came a recognition by the Administration that prohibited species were off limits to any foreign fleet. The push for domestic observers in the Bering Sea came from that court decision. And finally, Western Alaskans were able to negotiate a by-catch figure for the prohibited species that involved no new forms of technology to reduce the foreign by-catch. The foreign fleets had to make adjustments to stay within that year's cap. If their Nationals pursuing TALFF exceeded the acceptable by-catch figure, their fleet shut down within the FCZ for that year. We appeared before Congress in an earlier MFCMA reauthorization to warn that the domestic inshore-offshore allocation question would soon dominate the attention of the Councils and Congress in the 1980's. Unfortunately, we were not wrong.

No such cap currently exists for domestic draggers.

B. The Kuskokwim King: Ambassador Ed Wolfe came to Bethel in April, 1985 to learn first hand from the Kuskokwim chinook fishermen of their hardship with the variety of offshore interceptions. He wanted to understand first hand what Senator Stevens already knew prior to going to negotiate with the Japanese to terminate their high seas gill-net fishery which selectively targeted Western Alaskan sockeye and chinook salmon within the FCZ and international waters of the Bering Sea. He was visibly moved by the poverty he saw, and the singular dependence of that group of fishermen on one fish. He quickly understood there were no forseeable economic alternatives.

He understood that these individuals had given up industrial economies to conserve their landbase and way of life, for the sake of the salmon. They were careful stewards of their land and waters. Wolfe further understood that the State had forced fishermen to reduce even further their harvest of chinook. That choice was predicated by continuing Japanese target fishing of this premium ocean quality fish. The State chose to try and protect what escaped the hundreds of miles of Japanese monofilament net launched each day to harvest American salmon.

Wolfe was not around when in 1980, after five years of American bickering over king salmon take, the Japanese mothership fleet took over 1 million Western Alaskan chinook in the Bering Sea. Our scientists, using scale samples, and Japanese supplied catch data concluded that 700,000 plus 4 year old, 4-7 pound chinook were harvested. High seas drop-outs accounted for another 300,000 ocean mortalities. Western Alaska's king salmon fisheries have been troubled since 1968 when the Japanese first targeted the chinook in the Bering Sea, and it has never ceased. Our outrage was real. But the political forces of accomodation to the Japanese and their American lackies outweighed our anguish. All we ended up with was an unenforceable cap under the ineffective International North Pacific Fisheries Commission, a moribund group that does little more than count the American salmon intercepted by the Japanese and savor prestige of owning a Presidential appointment.

In this age of obscene trade imbalances, it seem unreasonable to believe that this Nation would be cowed into fearing Japanese threats that are twenty years old if we stop their ocean fishing of our salmon. The Japanese themselves or their American lackeys have threatened to embargo salmon from Alaskan waters. The Japanese have also pledged that if the US terminated its high seas gill net fishery within the FCZ that it fleets would fish American salmon in the high seas with impunity. These twenty year old threats still disturb the State Department, and other domestic political forces who know better. The Japanese even snookered the State Department in 1977 during the last renegotiations of the International North Pacific Fisheries Convention. Even though the Japanese Diet had passed domestic legislation in 1977 claiming anadramous species control of home island stocks within the Japanese FCZ and the high seas, the Japanese convinced the Americans that partial

limits to their interception fishery were a great accomplishment. We had the authority under the MFCMA to terminate their fishery. Instead nine years later, Western Alaskan are still wondering when the first breakthrough to halt their interceptions will occur.

Our Administration refuse to get tough with the Japanese. The Congress could direct the Administration to withhold surplus bottomfish allocation, threaten the joint venture operations which are so precious to their control of their surimi supply, or invoke trade sanctions to terminate this interception fishery.

Congressional options: The Senate has the opportunity in its reauthorization of the INPFC to correct many of the problems that afflict the Kuskokwim and other Alaskan and west coast salmon fisheries. We have prepared detailed amendments to the MFCMA to help correct the current inbalances, foremost of which is:

1. Eliminate the Japanese high seas gill net target fishing on American stream of origin stocks within the waters of the EEZ, and the high seas, except when these fish enter the EEZ of another State.
2. Place caps through legislation on the by-catch of domestic drag fleets of full utilized fisheries.
3. Require 100% domestic observer coverage that could be paid through a maximum allocation of 0.5% of biomass for each fully utilized fishery spread through the fleet, and the pooling of funds from the sale of by-catch to fund the observers program.
4. Eliminate the moribund INPFC, and replace this body with a new international order in the North Pacific Ocean composed of all littoral states with an interest in the marine resources of that ocean.
5. Provide direction through Legislation to the State Department to establish a new U.S.-Soviet Commission for the Semi-enclosed Bering Sea to cooperatively manage the marine resources of that Sea which is shared by both States, and to diminish the influence that the Nation of Japan over U.S marine policies in the Bering Sea.

We propose the following set of amendments [1] to the FCMA for your consideration.

STATEMENT OF THE JAPAN FISHERIES ASSOCIATION

The purpose of this statement is to provide the preliminary comments of the Japanese fishing industry on recent proposals to amend the Magnuson Fishery Conservation and Management Act (MFCMA) contained in S. 1245, and S. 1386. We offer these comments in the firm belief that the fishing industries of Japan and the United States are so interdependent that the impacts of the proposed legislation on the Japanese fishing industry are relevant to the Committee's deliberations.

I. COMMENTS CONCERNING PROPOSALS FOR MANDATORY PHASE-OUT OF FOREIGN FISHING

A. The United States enjoys a balance of trade surplus in fisheries trade with Japan. —Japan is the largest market for United States fisheries products and the only major trading partner with which the United States enjoys a large balance of trade surplus in fisheries products. This U.S. trade surplus has been strong for several years due in significant part to Japanese purchases under the "fish and chips" policy. In 1984 fisheries trade between the United States and Japan produced a surplus in favor of the U.S. of $350 million. Japanese imports of U.S. fish products exceeded Japanese exports of fish products to U.S. (excluding pearls) by a ratio of more than 2.3 to 1.0. Japanese joint venture groundfish purchases alone amounted to about $40 million in 1984.

More than ninety-five percent of the TALFF allocated to Japan by the United States is consumed in Japan and does not return to the United States to compete with U.S. fish products. Although exports of surimi-based analog products have increased in recent yerars, it is expected that those exports will soon be replaced by United States processed surimi. In short, Japan is the primary customer for United States fishery products—and a good customer. Far from contributing to the overall United States balance of trade deficit, allocations to Japan in fact contribute to and support the large trade surplus which the United States enjoys in fisheries trade with Japan.

B. The United States Are Interdependent in Fisheries Matters. —As you know, the Japanese fishing industry was largely responsible for development of the large-scale groundfish fisheries in what is now the U.S. Exclusive Economic Zone (EEZ) off

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[1] The proposed amendments were retained in the Committee files.

Alaska. In the 1960's and 1970's, Japanese distant water fishing companies prospected these fishing grounds, created fishing technologies and operating methods, developed new product lines, and built the fishing, transportation, processing, distribution and marketing facilities and business structures necessary to market these low value groundfish species successfully in the Japanese market. This involved investments of almost two billion dollars and employment of over 200,000 people.

In 1976 the U.S. adopted the MFCMA, placing the fisheries resources of the U.S. EEZ under exclusive U.S. management. Since then, the survival of Japan's distant water fishing industry—the value of its investments, the livelihood of its people and the flow of fish to its customers—has been dependent upon United States good will.

At the same time, the U.S. has accurately perceived that the development in the near term of a large-scale U.S. ground-fish fishery depends upon the Japanese market. The Japanese market for fish products is the largest in the world and the closest market to the groundfish of the U.S. EEZ off Alaska. Further, the Japanese market is the only market for the specialized, surimi-based product lines which were specifically developed by the Japanese fishing industry to support their groundfish fisheries.

The U.S. fishing industry's dependence on the Japanese market underlies the current U.S. "fish and chips" policy. Under this policy, Japan receives groundfish allocations for harvest by Japanese vessels in return for Japanese purchases of U.S. harvested groundfish. The "fish and chips" policy—based on negotiated accommodation between the two industries—gives recognition to their interdependence.

C. Benefits achieved by the U.S. fishing industry through mutual cooperation.—Under the "fish and chips" policy, the balance between Japanese allocations and Japanese purchases has largely been established by negotiations between representatives of the two industries. These negotiations have produced tremendous growth for the United States fishing industry while to a certain extent accommodating the Japanese fishing industry's need for time to adjust to the Americanization of these fisheries.

The "fish and chips" policy has produced enormous expansion of over-the-side joint venture purchases by Japanese companies. Such purchases have grown from less than 12,000 m.t. in 1981 to a projected 460,000 m.t. in 1985. While only four U.S. vessels with 22 U.S. crew members were employed in the United States-Japan joint ventures in 1981, 88 vessels and over 500 crew members are so employed in 1985. There is every prospect for continued expansion of the joint venture fisheries in the future under the "fish and chips" approach.

Although the growth in Japanese purchases of U.S. processed products has not been so dramatic, there is every reason to believe that the "fish and chips" approach will be successful here, too. The U.S. processing sector has only been actively involved in industry-to-industry negotiations with Japan since November, 1983. Thus, there have been less than two years of history with this approach. Nonetheless, Japanese purchases of United States processed groundfish products other than pollock are already significantly greater this year than in all of 1984. Japanese purchases of U.S. processed surimi have not reached anticipated levels this year, because surimi has not yet been produced commercially in the U.S. this year. However, in response to U.S. requests for assistance in developing a U.S. surimi industry and going far beyond the scope of the industry-to-industry agreement, two Japanese companies recently announced plans in conjunction with two major U.S. companies to construct surimi plants in Alaska and market U.S. processed surimi on a large scale. In addition three Japanese companies have announced their intention to construct surimi re-processing facilities in the United States for the production of surimi analog products. These projects represent an enormous breakthrough for the U.S. processing sector and a major commitment of Japanese capital to the development of U.S. processing capabilities. Thus, although the Japanese fishing industry has only focused on ways to assist in the development of the United States processing industry for a short time, major progress has been made and future progress is assured under the "fish and chips policy".

D. Mandatory phase-out of Japanese fishing would jeopardize the development of the United States groundfish fishery.—The Japanese fishing industry believes that the interests of the U.S. fishing industry favor a gradual substitution of U.S. harvested and processed groundfish products for Japanese products in the Japanese market on a basis that will maintain and enhance that market. Radical measures which would disrupt the supply to the Japanese market, increase prices or reduce quality, could easily destroy that market, resulting in a failure to Americanize these fisheries at their most productive levels. There are large protein sources--both fish and vegetable—which could be substituted for U.S. pollock to produce surimi or surimi-type products if the supply of U.S. pollock is disrupted or if the price is

sharply increased. Further, recent trends in the eating habits of Japanese consumers have shown an increasing preference for meat and poultry over fish products. Because of these trends and the fact that U.S. origin groundfish products are primarily lower cost food items, it is believed that the demand for such groundfish products—and especially surimi—is highly elastic; i.e., highly vulnerable to redirection toward other products. Rather than focusing on the "phase-out" of the Japanese fishery—a step which could destroy the market which the U.S. fishing industry wishes to exploit—the U.S. fishing industry should continue to focus on a "phase-in" process in which market stability (in terms of supply, price and quality) is preserved while substituting United States production for Japanese. This approach involves recognition of the mutual interdependence of the two fishing industries and a willingness to accommodate one another on a cooperative, negotiated basis—subject to the overall policy objective of the United States to Americanize these fisheries at the highest possible levels of production.

In this light, the proposals in the Stevens and Gorton bills for a mandatory phase-out of Japanese fishing in the United States EEZ are extremely dangerous to the interests of both countries. While "Americanization" is an appealing slogan from the United States perspective, thoughtful policy-makers and fishing industry representatives alike must ask: "Americanization" at what level? An "Americanization" program which destroys the market will result in the "Americanization" of poverty, not wealth. The generation of a "market void" through sharp reductions in Japanese allocations in 1986 and thereafter (and the withholding of up to 60 percent of such reductions from the market in order to stimulate the development of the U.S. processing sector) could in fact cause price increases which would trigger a severe contraction of demand.

Such price increases could also stimulate the Japanese fishing industry to tap alternative protein sources to make surimi or surimi-type products. Alternative sources of pollock in the Northwest Pacific amount to at least 3.5 million m.t. The Japanese fishing industry is also experimenting with surimi-type products made with alternative fish and vegetable proteins. A rapid phase-out of Japanese fishing in the United States EEZ could lead the Japanese fishing industry to turn to these alternative sources of supply.

While it has been asserted that king crab and sablefish are examples where United States products successfully filled a market void created by the phase-out of Japanese fisheries, the data in fact suggests otherwise. The Japanese king crab fishery was phased out in 1975. For a few years after the phase-out, a large amount of king crab was imported from the U.S. in anticipation of supply shortages in the Japanese market and as a result of speculative buying stimulated by expected price increases. However, actual demand could not keep pace with the rising price and a few years later a sharp decline occurred in the amount imported. In 1983, king crab imports fell below the amount imported from the U.S. before the phase-out and have continued to decrease to this day.

In the face of rising king crab prices, low-priced fish analogs (artificial crab legs) were developed as a substitute product. Demand for such analog products increased rapidly and now far exceeds the level of king crab consumption which existed prior to the phase-out of the king crab fishery. It is clear, therefore, that the United States did not actually succeed in filling the market void created by shutting out the Japanese king crab fishery. By enforcing the phase-out, the United States in effect brought about a contraction of the market, while the Japanese fishery, phased out of the market, made the most of their technological abilities to develop a substitute product to fill the void created by this market reduction. Through forced phase-out, U.S. products at one time seemed to be heading toward filling the void created. However, the phase-out resulted in a steep price rise which caused the consumers to turn their backs on king crab, replacing it with a highly competitive substitute.

As for the sablefish market, here too, we do not think that the United States has succeeded in filling the market void in Japan created by a natural phase-out. The data on Japanese consumption of sablefish indicate a steady decline as the price has risen.

In addition to adversely affecting the market for U.S.-origin groundfish products, a forced phase-out of Japanese fishing would directly undercut the economic and political basis upon which Japanese joint venture purchases and commitments to invest in shore-based surimi plants have been based. Japanese companies have been willing to carry out marginal joint venture operations and to make commitments to develop shore-based processing plants—which they expect to operate at a loss for several years—in exchange for Japanese directed fishing allocations. To obtain some reasonable stability in the level of Japanese allocations, these arrangements with the U.S. fishing industry make economic sense. In the absence of a reasonable level

of allocations, the Japanese fishing industry would have little incentive to engage in such unprofitable and/or high risk operations and would have to reassess its interests.

Under current conditions, a reasonable level of allocations for directed Japanese fishing is essential to the economic viability of the joint ventures. As most of the U.S. fishing vessels engaged in the joint ventures are not large enough to operate under all weather conditions, their operations must of necessity be limited to certain seasons of the year, while the Japanese factory-trawlers engaged in the joint ventures are able to maintain their overall operations on a viable basis by engaging in directed fishing during those periods when the U.S. fishing vessels are not operational, and this has enabled the continuance and expansion of the joint venture operations. It is therefore essential that Japan's directed fishing be allowed to continue unbroken if the current joint ventures are to continue developing in a steady manner.

Finally, a mandatory legislative phase-out would destroy the political basis in Japan for the continued and expanded access of United States groundfish products to the Japanese market. Japanese distant water fishing companies have been able to obtain necessary import quotas from the Government of Japan to expand their joint venture purchases and to increase imports of United States processed fisheries products only over strong opposition from Japanese coastal fishermen and shore-based surimi producers. This opposition has been overcome only because increased imports were considered necessary to permit Japan's distant water fishing industry to stay in business. If the United States adopts a policy which would in any event destroy Japan's distant water fisheries, the rationale on which the present tenuous political consensus in Japan is based would be seriously weakened and probably destroyed. Continuation of joint venture purchases at current levels would be jeopardized and significant expansion of such purchases or purchases of U.S. processed products would be rendered unlikely, regardless of the interests of the distant water fishing companies.

E. Conclusion.—The Japanese fishing industry believes that the best interests of both countries will be served by a policy of negotiation and mutual cooperation which recognizes the interdependence of the United States and Japanese fishing industries. This approach has produced enormous growth in the U.S. fishing industry in the last few years and continued growth is assured under this policy. Although the U.S. processing sector has lagged behind the U.S. harvesting sector in enjoying the benefits of that growth, this problem is being rectified. The Japanese fishing industry has committed to purchase 140,000 m.t. (round weight) of United States-processed surimi in 1985 and 1986, if offered on acceptable contract terms and otherwise practicable, and has taken concrete steps to carry out that commitment going far beyond the industry-to-industry agreement even to the extent of investing in the construction of the first commercial surimi plants to be built in the United States. The expansion of the U.S. processing sector and related employment is thus assured under the existing "fish and chips" policy.

The mandatory phase-out proposals under consideration by this committee would devastate the Japanese distant water fishing industry and destroy the basis for a cooperative approach to the "phase-in" of the U.S. groundfish fishery. Mandatory phase-out would substitute an enormous and highly dangerous gamble for the assured progress that is possible under a negotiated approach. The abstract certainty and temporary emotional satisfaction which the United States could achieve through a legislated phase-out would be accompanied by chaos and uncertainty both in the marketplace and in Japanese directed and joint venture fishing operations. Those who predict that this chaos would benefit the U.S. fishing industry are just guessing—and we think they are guessing wrong. For the sake of both our industries, we urge you to step back from this gamble and to allow the current process to continue toward full Americanization of this EEZ groundfish fisheries at the highest levels of production.

II. COMMENTS CONCERNING OTHER ISSUES

A. Management of straddling stocks.—We believe that the extension of exclusive U.S. fishery management jurisdiction beyond the U.S. EEZ to encompass nonmigratory "straddling stocks" would be contrary to international law practice. In addition, we believe the assertion of such authority may be detrimental to the interests of U.S. fishermen who fish in areas adjacent to the EEZ's of other nations.

We are unaware of any "straddling stock" which has suffered a significant decline as a result of foreign fishing in the waters adjacent to the U.S. EEZ. The Law of the Sea Treaty provides for international cooperation in management of such resources

on a bilateral or multi-lateral basis. We have not been advised that the United States has specific concerns with respect to any particular straddling stock. If the United States has such concerns, they should be identified with specificity and raised on a diplomatic basis with the fishing nation(s) involved. It is certainly premature to assert unilaterally an internationally unprecedented management jurisdiction outside the EEZ before the need for such radical action has been identified and diplomatic channels have been pursued.

B. 50% annual increase in foreign fishing fees.—This proposal is an alternative version of the mandatory phase-out proposals discussed above and the same comments apply.

The level of United States fishing fees has already increased to a point beyond which Japanese fishing vessels can operate economically. A legislated increase in fees by 50 percent on an annual basis would make it impossible to continue Japanese fishing operations on an economic basis and highly discourage cooperative activities and their expansion under the "fish and chips policy".

C. Elimination of high seas salmon interceptions.—Japan has been cooperating with the United States for many years with respect to the conservation and management of North American salmon and will continue to do so within the framework of the International Convention for the High Seas Fisheries of the North Pacific Ocean (INPEC).

D. Linkage of allocations to purchase of support services and supplies from U.S. vendors.—Of course, if the price and quality of the services provided by the United States to Japanese fishing and processing vessels are fully competitive, then, regardless of any legislative requirement, these services will be used. But to force these services on a foreign country by means of a linkage with fishing allocations would place an undue burden on Japanese fishing vessels and seriously dampen our interest in and capability to provide cooperation to the U.S. industry. Accordingly, this requirement would not produce a desirable situation for either the United States or Japan.

THE TEXAS SHRIMP ASSOCIATION,
Austin, TX, August 20, 1985.

Hon. JOHN C. DANFORTH,
Committee on Commerce, Science, and Transportation,
Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN DANFORTH: We request that these comments be included in the hearing record on the Fishery Conservation and Management Act.

Foreign Fishing: While there is no foreign fishing in the Southeast, the Texas Shrimp Association is still very interested in the date certain foreign fisheries phase-out. Our concern is the impact a phase-out would have on our efforts to negotiate with Mexico to permit some sort of fishing access in Mexican fishing grounds. We urge that an exception be made to the general inclusion rule to allow for reciprocal fishing arrangements. As an alternative, we would urge that the Committee consider a regional phase-out of foreign fishing in those regions of the country where phase-out has been requested by the fishermen.

Straddling Stocks: Under S. 1245, a straddling stock is any stock of associated species that are located within the fishery conservation zone and in the area beyond and adjacent to the zone. We recommend that the definition be broadened to include species that are located within the FCZ and in the area beyond and lateral to the zone. Straddling stocks would then be an accepted term to describe transboundary stocks which are to be managed as a unit throughout their range, as described in the national standards.

Habitat: Habitat is of critical importance to the productivity of the U.S. Gulf of Mexico shrimp fishery. T.S.A. supports the Habitat Conservation Policy which the National Marine Fisheries Service adopted in 1984. We oppose, however, the requirements set forth in S. 747 which would require that other federal agencies be required to respond to Council recommendations. Councils already take habitat into consideration when they are developing a fishery management plan. This could further slow down the FMP process with absolutely no greater return for the time spent. We support the more general habitat language included in H.R. 1533.

National Standards/Safety: The safety considerations encompassing a fishery management plan should be a key element of the decision making process. It is not felt, however, that safety considerations need to be added as a national standard under the FCMA. It is preferred that safety considerations be taken into account by the Councils, but not at the same level as national standards.

Council Appointments: We support changing the criteria for Council membership to "knowledgeable and experienced".

Confidential Data Treated by Councils: We are concerned about the release of confidential data to Council members and believe that, if such data is needed, it should be released to Council staff *only*; not to Council members.

Civil Penalties: T.S.A. supports the proposal in S. 747 which would limit the ability of the Administrative Law Judge to increase the civil penalty assessed. Under current procedures, although NOAA has assessed a penalty for alleged violations, the ALJ routinely issues a higher fine than initially assessed if he finds that a violation occurred.

We thank the Committee for their consideration of the views of the Texas Shrimp Association.

Sincerely,

RALPH RAYBURN, *Executive Director.*

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